

THE PUBLIC HEALTH ACTS

VOL. IV

EDITORS OF PREVIOUS EDITIONS.

FIRST EDITION (1876) by W. G. LUMLEY, LL.M., Q.C., *Senior Lecturer in Law, Government Board, and Formerly Lecturer, B.A., Barrister at Law.*

SECOND EDITION (1884) and THIRD EDITION (1887) by W. G. LUMLEY, Q.C., and ALEXANDER MACMORRIS, M.A., *Barrister at Law.*

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PUBLISHERS' NOTE

THE circumstances in which the present edition of "Lumley's Public Health" is produced and the difficulties arising out of those circumstances, have been explained in the Prefaces to former volumes. Since, through the war, the final labours of the Consolidation Committee appear to be indefinitely postponed, it becomes necessary to complete this edition by the inclusion of all remaining subject-matter in the form in which the Committee's previous labours have left it.

There does not appear to be any very obvious possible arrangement of this remaining subject-matter other than chronological. This has accordingly been adopted and, since it forms too large a bulk to be contained in a single closing volume, it has been divided into two of which this is the first and the second will soon be available.

The piecemeal arrangement of this edition has been forced upon us by circumstances and must not be taken to represent any idea of a satisfactory arrangement of Lumley. It is hoped that, after the war and after completion of the series of consolidating statutes, it will be possible to produce an edition which will be more logically arranged and more closely dovetailed. It is intended to publish a consolidated index to the whole of the five volumes when the work is completed.

Two final remarks need to be made in this Note. The first is that all temporary war legislation has been excluded, this following the precedent of the edition of Lumley produced at the end of the last war. The second that, as in the past, we shall welcome any corrections or suggestions from subscribers either as regards the present volume or as regards the whole work.

BUTTERWORTH & CO. (Publishers), LTD.

October, 1944.

THE ENGLISH AND EMPIRE DIGEST

The citation of each case in the text and Table of Cases is followed by a reference to the volume, page and number at which the case appears in the Digest. Thus :

Hill v. Wallasey L. B., [1894] 1 Ch. 133 ; 26 Digest 270, 97

HALSBURY'S COMPLETE STATUTES OF ENGLAND

Each reference to a public Act of Parliament, not printed in full in this work, or to a section of such an Act in the text or Table of Statutes is followed by a reference to the volume and page at which the Act or section appears in Halsbury's Statutes. Thus :

Interpretation Act, 1889, s. 5 (18 Halsbury's Statutes 993)

THE ALL ENGLAND LAW REPORTS

In the text and the Table of Cases the citations of the reports of cases decided since the beginning of 1936 include a reference to the All England Law Reports. Thus :

Ellis v. Fulham Borough Council, [1937] 3 All E. R. 451

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Young v. Edwards (1864), 33 L. J. M. C. 227 ; 11 L. T. 424 ; 38 Digest 195, 314 : 4439	
Young v. Kingston-on-Thames, Surbiton, New Malden and Coombe Joint Burials Committee, [1907] 1 K. B. 416 ; 71 J. P. 121 ; 76 L. J. K. B. 382 ; 96 L. T. 134 ; 23 T. L. R. 218 ; 5 L. G. R. 481, C. A. ; 7 Digest 546, 255 4992	
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Young, Staples v. 4180	
Young, Sydney Municipal Council v. 4377	
Young & Sons, Clacton L. B. v. 4415, 4860	
Young and White, R. v. 4232, 4233	
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Ystradyfodwg and Pontypridd Main Sewerage Board v. Bensted, [1906] 1 K. B. 294 ; 70 J. P. 240 ; 75 L. J. K. B. 202 ; 94 L. T. 20 ; 54 W. R. 440 ; 22 T. L. R. 213 ; 4 L. G. R. 241 ; on appeal, [1907] 1 K. B. 490 ; 71 J. P. 76 ; 76 L. J. K. B. 282 ; 96 L. T. 282 ; 23 T. L. R. 105 ; 5 L. G. R. 189, C. A. ; affirmed, [1907] A. C. 264 ; 71 J. P. 425 ; 76 L. J. K. B. 876 ; 97 L. T. 141 ; 23 T. L. R. 621 ; 5 L. G. R. 865 ; 5 Tax Cas. 230 ; 28 Digest 7, 15.. 4378	
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THE PUBLIC HEALTH ACTS.

THE GAME ACT, 1831.

(1 & 2 WILL. 4, c. 32) (a).

An Act to amend the Laws in England (b) relative to Game.

[5th October 1831.]

* * * * *

2. The word "game" shall for all the purposes of this Act be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards (c).

Definition of
"game" under
this Act.

(a) See the L. G. A., 1894, ss. 27, 32, *post*, pp. 4911, 4912.

(b) All the clauses and provisions of this Act and of 2 & 3 Vict. c. 35 (repealed by the Revenue Act, 1860, s. 39), relating to the granting of licences by justices to deal in game, and to the holding of special sessions for the purpose of granting such licences, and also all the clauses, provisions, and penalties contained in the said Acts or either of them relating to dealers in game and to the selling of game, either by or to such dealers or others, are extended to the whole of the United Kingdom by the Game Licences Act, 1860, s. 13; 8 Halsbury's Statutes 1089.

(c) Note that deer, rabbits, quail, landrail, woodcock, snipe, geese, duck, pigeon, and plover are not included in this definition.

* * * * *

4. If any person licensed to deal in game by virtue of this Act as hereinafter mentioned shall buy or sell, or knowingly have in his house, shop, stall, possession, or control, any bird of game (a) after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; or if any person not being licensed to deal in game by virtue of this Act as hereinafter mentioned, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid, or shall knowingly have in his house, possession, or control any bird of game (except birds of game kept in a mew or breeding place) after the expiration of forty days (one inclusive and the other exclusive) from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; every such person shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so bought or sold, or found in his house, shop, possession, or control, such sum of money, not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction (b).

Penalty on
dealers in game
buying, selling
or possessing
birds of game
after ten days
after expiration
of season for
killing, and on
other persons
buying or selling
birds after ten
days, or pos-
sessing them,
except for
breeding, after
forty days.

(a) Alive or dead (*Loom v. Bailly* (1860), 3 E. & E. 444; 25 J. P. 55; 25 Digest 348, 5). Under an earlier Act which contained no provision as to the ten days' grace, it was held that it was not an offence for a qualified person to have in his possession nine days after the commencement of the close season birds killed before its commencement

**Note to
Section 4.**

(*Simpson v. Urwin* (1832), 3 B. & Ad. 134; 25 Digest 390, 405). It makes no difference whether the bird is tame or wild (*Harnett v. Miles* (1884), 48 J. P. 455; 25 Digest 348, 7). But now by s. 10 of the Revenue Act, 1911, "so much of s. 4 of the Game Act, 1831, as makes it an offence for any person to buy or sell, or have in his house, possession, or control game birds after the dates therein specified shall not apply where the game is live game, and the person buying, selling, or having in his house, possession, or control the game, is keeping or intending to keep the game solely for the purpose of breeding or for sale alive, and either is licensed at the time to deal in game, or is a holder of a certificate or licence to kill game in force at the time. The amendments made by this section shall have effect in the Game Act, 1831, as applied by any subsequent enactment, as well as in that Act as originally enacted." This provision relieved game breeders from a difficulty: if they were licensed to sell game, they could not lawfully keep their stock during the close season (s. 4); if they were not licensed, purchases from them were illegal: see *Cook v. Trevener*, [1911] 1 K. B. 9; 74 J. P. 469; 25 Digest 348, 6. See also *M'Lean v. Johnston*, [1913] S. C. (J.) 1. Game killed abroad is not within the section (*Guyer v. R.* (1889), 23 Q. B. D. 100; 53 J. P. 436; 25 Digest 390, 404). See, however, the Customs and Inland Revenue Act, 1893, s. 2, under which licences are required for dealing in imported game.

(b) As to forfeiture of the licence, see s. 22, *post*, p. 4103.

* * * * *

Justices to
hold a special
session yearly
for granting
licences to
persons to deal
in game.

18. The justices of the peace of every county, riding, division, liberty, franchise, city, or town (a) shall hold a special session in the division or district for which they usually act, and in every year in the month of July (b), for the purpose of granting licences to deal in game, of the holding of which session seven days notice shall be given to each of the justices acting for such division or district; and the majority of the justices assembled at such session, or at some adjournment thereof, not being less than two, are hereby authorised (if they shall think fit) to grant under their hands to any person being a householder or keeper of a shop or stall within such division or district and not being an innkeeper (c) or victualler, or licensed to sell beer by retail (d), nor being the owner, guard, or driver of any mail coach or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons, a licence (e) according to the form in the Schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only, kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep a board having thereon in clear and legible characters, his Christian name and surname, together with the following words (that is to say), "Licensed to deal in game"; and every such licence granted in any succeeding year shall continue in force for the period of one year next after the granting thereof.

(a) The powers, duties, and liabilities of justices under this section are now transferred to district and county borough councils by ss. 27, 32 of the L. G. A., 1894, *post*, pp. 4911, 4912.

(b) By 2 & 3 Vict. c. 35, s. 4, after reciting this enactment, and that it is expedient that justices should be empowered to hold a special session for the purpose of granting these licences not only in July but also at any subsequent period of the year, it is enacted that from and after the passing of this Act it shall be lawful for the said justices of the peace to hold in their respective divisions or districts a special session for the purpose of granting licences to deal in game, not only in the month of July, but also at any time and from time to time as often as they shall think fit after the said month of July in every year; and it shall also be lawful for the majority of the said justices (not being less than two) assembled at any such session or at any adjournment thereof, to grant licences to deal in game, in the manner directed by the said last-recited Act, and under and subject to the provisions and regulations thereof: Provided always, that of the holding of any such special session seven days' notice shall be given to each of the justices acting for the division or district in which such session is intended to be held: Provided also, that every licence to deal in game, at whatever time the same hath been or shall be granted, shall continue in force from the granting thereof until the first day of July then next following,

and no longer, anything in the said last-recited Act or in such licence to the contrary notwithstanding.

Although the whole of the above Act, 2 & 3 Vict. c. 35, was repealed by the Revenue Act, 1869, s. 39, it is considered that the foregoing section remains in force by virtue of s. 13 of the Game Licences Act, 1860, cited, *ante*, p. 4101.

(c) Although an innkeeper may not be a licensed dealer in game, yet under s. 26 of this Act an innkeeper or tavern keeper may without this licence sell game for consumption in his own house, if he has procured it from a licensed dealer.

(d) Including the holder of an additional licence to sell beer under s. 1 of the Revenue Act, 1863 (*Shoolbred v. St. Pancras JJ.* (1890), 24 Q. B. D. 346; 54 J. P. 231; 25 Digest 389, 401); but such licences are no longer granted. A question has been raised, but not decided, whether a person being the owner of several establishments in different districts and holding a licence to sell beer in one of them can hold a licence to sell game in one or more of the other establishments. See *R. v. Bird* (1898), 62 J. P. 309; 25 Digest 389, 402.

(e) An adapted form of licence is given in Warry's Game Laws, 1896 ed., at p. 203. The licence must specify the particular house, shop, or stall at which the game is to be sold. Until this is done the excise licence required by s. 14 of the Game Licences Act, 1860, as amended by s. 17 of the Revenue (No. 2) Act, 1861, cannot be granted. A game dealer's licence is personal and cannot be transferred. There is no provision for the case of a licensed person dying during the year his licence is current. It would seem that the personal representative carrying on the business should apply for a fresh licence.

Note to Section 18.

* * * * *

21. Provided always, that persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged by virtue of this Act to take out more than one licence in any one year to authorise them to deal in game at such house, shop or stall.

Proviso as to
licences in case
of partnership.

22. If any person licensed by virtue of this Act to deal in game shall during the period of such licence be convicted of any offence whatever against this Act, such licence shall thereupon become null and void (a).

Licences to
become void on
any conviction
under this Act.

(a) There is no prohibition against an application by a convicted person for another licence. As to offences, see ss. 4, 28.

* * * * *

28. If any person, being licensed to deal in game according to this Act, shall buy or obtain any game from any person not authorised to sell game for want of a game certificate, or for want of a licence to deal in game (a); or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop, or stall, without such board as aforesaid being affixed to some part of the outside of the front of such house, shop, or stall at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game at any place other than his house, shop, or stall where such board shall have been affixed; or if any person, not being licensed to deal in game according to this Act, shall assume, or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game; every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction.

Penalty on
licensed
dealers
buying game
from persons
not authorised
to sell, or
otherwise
offending;

and on un-
licensed persons
feigning to be
licensed.

(a) It makes no difference whether he knew or not, when he purchased the game, that the seller was unlicensed (*R. v. Muirhead* (1887), 51 J. P. 760).

29. Provided always, that the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling in

Servants of
licensed dealer
may buy and
sell game.

Section 29.

One licensed dealer in game may sell on account of another.

every case, where the same would have been lawful if transacted by such licensed dealer himself: Provided also, that nothing herein contained shall prevent any licensed dealer in game from selling any game which shall have been sent to him to be sold on account of any other licensed dealer in game.

* * * * *

47. [*Limitations of actions, etc.*] (a).

(a) This section was repealed by the Public Authorities Protection Act, 1893, *post*, p. 4875.

* * * * *

SCHEDULE (A.)

FORM OF LICENCE.

At a special session of the justices of the peace of the county of _____ [or riding, etc., as the case may be], acting for the division of [or otherwise, as the case may be] in the said county, holden at _____ in the said _____ on the _____ day of _____ in the year _____

We _____, being _____ justices acting for the said _____ assembled at the said special session, do hereby authorise and empower A. B., of _____ [here insert the name, description, and place of residence, and if more than one in partnership, say C. D., of, etc., and E. F., of etc., being partners], being a householder [or householders] [or keeper (or keepers) of a shop or stall, as the case may be], to buy game from any person authorised to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game"; and we do also authorise and empower the said A. B., [or C. D. and E. F., being partners] to sell at his [or their] house [shop or stall] any game so bought, provided that the said A. B. (or C. D. and E. F., being partners) shall affix to some part of the outside of the front of his [or their] house [shop or stall] and shall there keep, a board having thereon in clear and legible characters, his Christian name and surname [or their Christian names and surnames], together with the following words, "Licensed to deal in game."

This licence will expire on _____.

(Signed) _____, Justice of the Peace.
_____, Justice of the Peace.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 18) (a).

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public nature.

[8th May 1845.]

Act to apply to all undertakings authorised by Acts hereafter to be passed.

[1.] This Act shall apply to every undertaking authorised by any Act which shall hereafter (b) be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act (c).

(a) This Act is incorporated with the L. G. A., 1933, ss. 160, 161, Sched. VI., *ante*, pp. 978, 985, 1263, except as therein mentioned. It is also incorporated with other Acts included in this work, e.g., the Water Supplies (Exceptional Shortage Orders) Act, 1934,

**Note to
Section 1.**

Vol. V., *post*, and the County Courts Act, 1934, s. 34 (2); 27 Halsbury's Statutes 107. It is amended by 23 & 24 Vict. c. 106; 46 & 47 Vict. c. 15; 58 & 59 Vict. c. 11, *post*, pp. 4252, 4664, 4938. It should be noticed, however, that in the application of the provisions of the Lands Clauses Acts in some cases, these provisions have been largely modified by recent legislation. The Small Holdings and Allotments Act, 1908, s. 39, *post*, p. 5075, incorporates the Lands Clauses Acts with reference to the compulsory acquisition of land subject to the modifications contained in Sched. I. to that Act. A similar provision is contained in a large number of modern Acts, including the Public Works Facilities Act, 1930, ss. 2, 8 (4), Vol. V., *post*, continued to December 31, 1943, by the Expiring Laws Continuance Act, 1942; the L. G. A., 1933, ss. 160, 161, Sched. VI., *ante*, pp. 984, 985, 1263; the Agricultural Land (Utilisation) Act, 1931, s. 3, Sched. I.; 24 Halsbury's Statutes 52, 66; the Special Areas (Development and Improvement) Act, 1934, s. 4, Sched. III.; 27 Halsbury's Statutes 829, 834; the Housing Act, 1936, Sched. I., *ante*, p. 1773. See also the Defence of the Realm (Acquisition of Land) Act, 1916, *post*, p. 5157, and the Land Settlement (Facilities) Act, 1919, *post*, p. 5222. And reference must be made to the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5215, which provides generally for the procedure as to the assessment of compensation in respect of land acquired compulsorily for public purposes, and largely supersedes the provisions of the Lands Clauses Acts in cases to which it applies.

(b) See, as to a corporation incorporated before 1845, but empowered to take lands under later Acts, *In re Mills' Estate* (1887), 34 Ch. D. 24; 51 J. P. 151; 11 Digest 254, 1597. A private charity incorporated by charter is not an undertaking of a public nature within the meaning of this Act (*Re Sion College* (1887), 57 L. T. 743; 11 Digest 105, 24).

(c) The preamble and part of s. 1 were repealed by the S. L. R. A., 1891.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows: *Interpretation.*

2. The expression "the special Act," used in this Act, shall be construed "Special Act." to mean any Act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" "Prescribed." used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, "The works." of whatever nature, which shall by the special Act be authorised to be executed; and the expression "the promoters of the undertaking" shall "Promoters of the undertaking." mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking (a).

(a) As to the meaning of these expressions when read as incorporated with the L. G. A., 1933, see ss. 160 (8), 161 (5) of that Act, *ante*, pp. 985, 987.

3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,) *Interpretations in this and the special Act.*

Words importing the singular number only shall include the plural number, Number.
and words importing the plural number only shall include the singular number:

Words importing the masculine gender only shall include females: Gender.
The word "lands" shall extend to messuages, lands, tenements, and "Lands." hereditaments of any tenure (a):

The word "lease" shall include an agreement for a lease: "Lease."
The word "month" shall mean calendar month: "Month."

The expression "superior courts" shall mean her Majesty's superior "Superior courts." courts of record at Westminster . . . (b):

- Section 3.** The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:
- "Oath."
- "County." The word "county" shall include any riding or other like division of a county and shall also include county of a city or county of a town:
- "Sheriff." The word "sheriff" shall include under sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:
- "Clerk of the peace."
- "Justices." The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands, being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:
- "Two justices."
- Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking (c):
- "Owner."
- "The Bank." The expression "the Bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England . . . (b):

(a) It seems to be doubtful whether the definition includes incorporeal hereditaments, such as easements. See *G. W. Rail. Co. v. Swindon, etc. Rail. Co.* (1884), 9 App. Cas. 787; 48 J. P. 921; 11 Digest 106, 36; and per VAUGHAN WILLIAMS, L.J., in *Re City and South London Railway and St. Mary Woolnoth*, [1903] 2 K. B. at p. 737; 67 J. P. 221; affd., [1905] A. C. 1; 69 J. P. 101; 11 Digest 125, 159. The definition of "land" in the Law of Property Act, 1925, the Settled Land Act, 1925, and other later Acts, is much wider than the definition in the text and this fact should be borne in mind when construing the provisions of those Acts referred to in the notes to this Act.

(b) Words relating to Ireland only are omitted here.

(c) This definition includes mortgagees of land who have a power of sale. See *Martin v. L. C. & D. Ry.* (1866), 1 Ch. App. 501; 11 Digest 274, 2019; *R. v. Middlesex (Clerk of the Peace)*, [1914] 3 K. B. 259; 79 J. P. 7. The extended powers of sale conferred by the Settled Land Act, 1925, should be borne in mind in connection with this definition.

Short title of the Act.

4. In citing this Act in other Acts of Parliament and in legal instruments it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845" (a).

(a) The expression "Lands Clauses Acts" is sanctioned by the Interpretation Act, 1889, s. 23.

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted, that for the purpose of making any such incorporation it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate.

Section 5.

Form in which portions of this Act may be incorporated with other Acts.

And with respect to the purchase of lands by agreement, be it enacted as follows:

Purchase of lands by agreement.

6. Subject to the provisions of this and the special Act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special Act authorised to be taken, and which shall be required for the purposes of such Act, and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever (a).

Power to purchase lands by agreement.

(a) See *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 11 Digest 107, 39. A person having a mere possessory title, good against every one but the lawful owner and in course of becoming absolute as against him, has a *prima facie* right to compensation (*Perry v. Glissold*, [1907] A. C. 73; 11 Digest 123, n).

The promoters cannot bind themselves not to use their statutory powers in respect of any portion of the lands taken, even though the owner agrees to accept a smaller sum by way of compensation in consideration of a restriction in the conveyance on the user of the lands (*Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; 11 Digest 103, 4; *Re S. E. Rail. Co. and Wiffin's Contract*, [1907] 2 Ch. 366; 40 Digest 310, 2653). And see *Stourcliffe Estates Co., Ltd. v. Bournemouth Corporation*, [1910] 2 Ch. 12; 74 J. P. 289; 11 Digest 120, 131. See, however, a special power of this nature in relation to improvement lines given by P. H. A., 1925, s. 33 (7); Vol. V. and 13 Halsbury's Statutes 1129.

7 (a). It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail (b) or for life, married women seised in their own right (c) or entitled to dower, guardians, committees of lunatics and idiots (d), trustees or feoffees in trust for charitable or other purposes, executors and administrators (e), and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be

Parties under disability enabled to sell and convey.

Section 7. of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability.

(a) This section is to take effect as if the references to the disabilities which were removed by the Law of Property Act, 1922 (see now the Settled Land Act, 1925 (15 Geo. 5, c. 18)), had been omitted (15 Geo. 5, c. 5, Sched. IX. 2). Under the Settled Land Act a tenant for life (ss. 38, 39 (5) and 58), a tenant in tail in possession (s. 20 (1) (i)), a married woman (s. 20 (1) (x) and s. 25) and trustees for charitable, ecclesiastical or public trusts or purposes (s. 29) are given powers of sale. The powers of dealing with settled property and of property subject to equitable interests is outside the scope of this work and is too involved a subject to permit of being effectively dealt with in a note. Reference should, therefore, be made to one of the standard works on the Law of Property Act, 1925, the Settled Land Act, 1925, and the Administration of Estates Act, 1925.

(b) Even if the estate tail is inalienable; but this statute does not extend to the Crown (*In re Cuckfield Burial Board* (1854), 19 Beav. 153).

(c) The trustees of land for married women, who are absolutely entitled for their separate use, cannot contract to sell under this section (*Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 11 Digest 164, 418).

(d) Note that only the committee, not the lunatic, can sell. See *Re Tugwell* (1884), 27 Ch. D. 309; 20 Digest 361, 989.

(e) This means executors and administrators who are seised, possessed of, or entitled to land or any estate or interest therein, and not executors or administrators who have only a power of sale (*Re Barrow-in-Furness Corporation and Rawlinson's Contract*, [1903] 1 Ch. 339; 24 Digest 611, 6416). See also the Administration of Estates Act, 1925.

Parties under disability to exercise other powers.

8. The power hereinafter given to enfranchise copyhold lands (a), as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

(a) All copyhold lands are enfranchised by the Law of Property Act, 1922.

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the Bank.

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision herein-after contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party (a), and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall, upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not, then the surveyor nominated by the said justices, shall

annex to the valuation a declaration in writing subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the Bank for the benefit of the parties interested, in manner hereinafter mentioned (b).

Section 9.

(a) The surveyor must not be the party himself (*Peters v. Lewes, etc. Rail. Co., ante*, p. 4108).

(b) See s. 69, *post*, p. 4127. The declaration in writing is necessary before a claim can be made for specific performance (*Bridgend Gas and Water Co. v. Dunraven* (1885), 31 Ch. D. 219). See note (a) to s. 7, *ante*, p. 4108. "Where a purchaser has power to acquire land compulsorily and a contract, whether by virtue of a notice to treat or otherwise is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into court" (s. 42 (7), Law of Property Act, 1925 (15 Geo. 5, c. 20)).

10. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorised to be purchased for the purposes of the special Act to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rentcharge payable by the promoters of the undertaking, *but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum* (a).

Where vendor absolutely entitled, lands may be sold on chief rents.

(a) So much of this section as provides that, save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for his own benefit, the consideration to be paid for any lands or for any damage done thereto shall be in a gross sum, was repealed by 23 & 24 Vict. c. 106, s. 1. The power to sell for an annual rentcharge provided by this section is extended by 23 & 24 Vict. c. 106, s. 2, *post*, to parties under disability. The amount of the rentcharge is under s. 4 of that Act to be settled in manner directed by s. 9, *supra*. The Law of Property Act, 1922, 12 & 13 Geo. 5, c. 16, s. 39, provided that the power conferred by s. 10 to sell and convey land in consideration of an annual rentcharge shall extend to a tenant for life in like manner in all respects as if he had been entitled to dispose of the settled land absolutely for his own benefit, and accordingly, s. 4 of the Lands Clauses Act, 1860, shall not apply to such a sale. That section is, however, repealed by the Settled Land Act, 1925 (15 Geo. 5, c. 18), which does not contain an identical provision though the same effect results from the combined operation of ss. 38 and 39, *ibid.*, and s. 9 and Sched. IX. of the Law of Property (Amendment) Act, 1924 (15 Geo. 5, c. 5). See also note (a) to s. 7, *ante*, p. 4108. On a contract of sale for a yearly rentcharge, under which the undertakers have entered, the vendor has no lien for arrears of the rentcharge (*Earl of Jersey v. Briton Ferry Floating Dock Co.* (1869), L. R. 7 Eq. 409; 32 Digest 296, 709).

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties (a), and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking (b).

Payment of rents to be charged on tolls.

(a) *E.g.*, by a power of entry (*Forster v. Manchester and Milford Rail. Co.* (1880), 49 L. J. Ch. 454; 39 Digest 55, 675).

(b) The power given by this section is extended by 23 & 24 Vict. c. 106, s. 2, *post*, to persons under a disability. As to the removal of certain classes of persons from this category, see note (a) to s. 7, *ante*, p. 4108. The holder of a rentcharge may be allowed leave to distrain, notwithstanding the appointment of a receiver (*Eyton v. Denbigh, Ruthin and Corwen Rail. Co.* (1868), L. R. 6 Eq. 14, 488; 39 Digest 55, 670). The rentcharge is a first charge upon the land conveyed, but upon that land only (*Eyton v. Denbigh, Ruthin and Corwen Rail. Co.* (1869), L. R. 7 Eq. 439; 11 Digest 165, 439).

Section 12.

Power to purchase lands required for additional accommodation.

Authority to sell and re-purchase such lands.

12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking for the purposes aforesaid shall not exceed the prescribed quantity.

Restraint on purchase from incapacitated persons.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes (a), purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them (b).

(a) See *Hooper v. Bourne* (1877), 3 Q. B. D., at p. 272; *affd.* (1880), 5 App. Cas. 1; 11 Digest 283, 2120.

(b) As to persons under disability, see note (a) to s. 7 on p. 4108, *ante*.

Municipal corporations not to sell without the approbation of the Treasury.

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Treasury, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Purchase of lands otherwise than by agreement.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows (a):

* * * * *

(a) Sections 16 and 17 relate to the subscription of capital before these clauses are put in force. They are not set out here, as they cannot apply to local authorities.

This group of sections relates to the compulsory acquisition of land. As already stated in note (a) on p. 4108, *ante*, they have been modified in their application to certain cases. But the assessment of compensation in respect of land acquired compulsorily for public purposes is now regulated by the Acquisition of Land (Assessment of Compensation) Act, 1919. See that Act, *post*.

Mortgages of land with a power of sale are entitled under these clauses to all the rights of owners. See *R. v. Middlesex (Clerk of the Peace of)*, [1914] 3 K. B. 259; 79 J. P. 7.

As to the power of the Crown to take lands without payment of compensation in time of war, see *Re a Petition of Right*, [1915] 3 K. B. 649; 84 L. J. K. B. 1961; on appeal (1916), 32 T. L. R. 699; 11 Digest 546, 498; *Att.-Gen. v. De Keyser's Royal Hotel*, [1920] A. C. 508; 11 Digest 546, 499.

Notice of intention to take lands.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take (a), they shall give notice thereof to all the parties interested in such lands, or to the parties

enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims (b) made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works (c).

(a) As to the meaning of these words, see *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142; 11 Digest 212, 971. The corporation of a borough, being empowered by a local Act which incorporated this Act to erect and maintain in, on, over, or under any street in which their tramways were laid poles and posts for the purpose of working the tramways by mechanical power, were held not to have taken land within the meaning of this Act by erecting a post on it in the pavement forming part of a street, and that a preliminary notice to or consent by the owner of the soil in order to justify their action was not required (*Escott v. Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135; 26 Digest 327, 597).

(b) W. was the lessor, and S. was the lessee of premises the frontage of which was compulsorily acquired by a tramway company under statutory powers. W. had claimed a certain sum as the present value of the frontage deferred until the expiration of the lease, and had accepted an offer by the company of a smaller sum "for the purchase of the interest claimed by you." S. on assigning the lessee's interest in the frontage covenanted with the company to pay the whole rent reserved by his lease. On an originating summons, W. asked to be declared entitled to require the company to procure from S. at their own expense a covenant by S. with W. to pay the whole rent reserved without deduction for severance. It was held that as W. had not put forward his claim on the ground that he would be deprived of any portion of the rent, there was no contract between W. and the company for the covenant asked for (*In re Way and London United Tramways Co., Ltd.* (1908), 125 L. T. Jo. 594).

(c) If notice to treat is served before applying to Parliament for power to take land, and the Act gives power to take more land than that described in the notice, such additional land may be taken, though it was not included in the notice (*In re Corporation of Huddersfield and Jacob* (1875), 10 Ch. App. 92; 11 Digest 114, 85). After notice to treat an owner cannot deal with his property so as to cast any additional expense on the undertakers (*In re Marylebone Improvement Act* (1871), L. R. 12 Eq. 389; *Metropolitan Rail. Co. v. Woodhouse* (1865), 34 L. J. Ch. 297; 12 L. T. 113); nor can he deal with other property not included in the notice to treat, but injuriously affected by the proposed works, so as to give persons bona fide acquiring an interest in such property a right to compensation for injurious affection (*Mercer v. Liverpool, St. Helens and South Lancashire Rail. Co.*, [1904] A. C. 461; 68 J. P. 533; 11 Digest 276, 2038). An owner may before acceptance withdraw and amend his claim, therefore where an owner (possessing a leasehold interest) claims for disturbance and makes no claim in respect of the leasehold interest and subsequent to the notice to treat and before his claim is accepted, assigns his leasehold interest, his assignee is in the same position as the owner and can withdraw or amend the claim either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim. The undertakers cannot on receipt of such a claim ignore the assignee and continue to treat and contract with the original owner (*Cardiff Corporation v. Cook*, [1923] 2 Ch. 115; 87 J. P. 90; Digest Supp.). But he may transfer his interest in toto (*Sewell v. Harrow and Uxbridge Rail. Co.* (1902), 19 T. L. R. 130; settled on appeal (1903), 20 T. L. R. 21; see also *Zick v. London United Tramways, Ltd.*, [1908] 2 K. B. 126; 72 J. P. 257; 11 Digest 276, 2039). The mere fact that the promoters have already taken possession of the property does not preclude them from their statutory right to give notice to treat (*Cooke v. London C. Co.*, [1911] 1 Ch. 604; 75 J. P. 309). For a case where a builder after notice to treat suspended operations, having obtained an extension of time under his agreement, see *Birmingham and District Land Co. v. L. & N. W. Rail. Co.* (1889), 40 Ch. D. 268; 11 Digest 214, 990. Where notice to treat is given in respect of part only of the land comprised in a building agreement, the building agreement may be still binding in respect of the land not included (*Re Furness and Wilsden U. D. Co.* (1906), 70 J. P. 25; 22 T. L. R. 52). As to what expenditure by an owner can be recovered as thrown away, and therefore damage by reason of the execution of the works, see *Ex parte Streatham and General Estates Co.* (1888), 4 T. L. R. 766; 11 Digest 130, 188. Notice to treat operates to release the landowner from any restrictive covenants that he may be under in respect of the land comprised in it (*Baily v. De Crespigny* (1869), L. R. 4 Q. B. 180; 31 Digest 465, 6111). The remedy of the covenantee is, under s. 68,

**Note to
Section 18.**

for compensation from the undertakers, and not for an injunction or damages (*Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 60 J. P. 182; 11 Digest 145, 297; *Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574; 67 J. P. 1; 11 Digest 146, 298). But a lessor may recover substantial damages for breach of covenant to repair committed after notice to treat and before assignment to the promoters (*Mills v. East London Union* (1873), L. R. 8 C. P. 79; 31 Digest 338, 4815). Notice to treat does not make the landowner's claim for compensation an attachable debt before the compensation has been assessed (*Richardson v. Elmit* (1877), 2 C. P. D. 9; 21 Digest 624, 2101). Where notice to treat is properly withdrawn, a second notice can be given provided the time limited under s. 123, *post*, p. 4149, has not expired (*Ashton Vale Iron Co. v. Bristol Corporation*, [1901] 1 Ch. 591; 11 Digest 173, 509). Persons known to be equitable mortgagees having a lien over the lands proposed to be taken, ought to be served with notice to treat as being "parties interested" (*Martin v. L. C. & D. Rail. Co.* (1866), 1 Ch. App. 501; 11 Digest 274, 2019). And see *R. v. Middlesex (Clerk of the Peace)*, [1914] 3 K. B. 259; 79 J. P. 7.

Where a proposed road is mentioned in the particulars scheduled to a notice to treat as one of the boundaries of the land to be purchased, the same must be regarded as descriptive only, and not as passing any right to have the road constructed, or any right over land adjacent to the land to be purchased (*In re London School Board and Foster* (1898), 87 L. T. 700; 11 Digest 119, 123).

As to what is a sufficient notice to treat, see *Shepherd v. Norwich Corporation* (1885), 30 Ch. D. 553. The notice to treat must be for the whole estate or interest of the parties interested in the lands (*In re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891), 8 T. L. R. 79; 11 Digest 174, 515). As to the effect of a notice to treat for part only of a building, see s. 92 and notes thereto, *post*, p. 4139.

For a general form of notice to treat, see *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

As to when a notice requiring execution of works under the Agricultural Land (Utilisation) Act, 1931, is to be served in the same way as a notice to treat, see ss. 2 (4), 3 (1), Sched. I., to that Act; Vol. V. and 24 Halsbury's Statutes 49, 52, 66.

Service of
notices on
owners and
occupiers of
lands.

19. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of
notices on a
corporation
aggregate.

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail
to treat or in
case of dispute
question to be
settled as after
mentioned.

21. If for twenty-one days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation (a).

(a) See ss. 25—57, *post*. And see also the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5215. As to the right of a person whose lands are taken in respect of a right of pre-emption over adjoining lands, see *Clout v. Metropolitan Rail. Co.* (1883), 48 L. T. 257; 11 Digest 131, 195; and in respect of an option over lands, *Oppenheimer v. Minister of Transport*, [1942] 1 K. B. 242; [1941] 3 All E. R. 485; 106 J. P. 46.

Disputes as to
compensation
where the

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release

any lands taken or required for or injuriously affected (a) by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices (b).

Section 22.

amount claimed does not exceed £50 to be settled by two justices.

See now the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5215.

(a) That is, if injuriously affected, whether taken or not (*R. v. St. Luke's (Chelsea) Vestry* (1872), L. R. 7 Q. B. 148; 11 Digest 133, 205).

(b) The summons to hear and determine the question of compensation may be issued more than six months after the service of the notice to treat (*R. v. Hannay* (1874), 44 L. J. M. C. 27; 31 L. T. 702. See also s. 24, *infra*, and note thereto).

23. If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration (a), and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award (b), or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Compensation exceeding £50 to be settled by arbitration or jury, at the option of the party claiming compensation.

(a) That is, by arbitration under this Act, not under the P. H. A., 1875. See *Ex parte Rayner* (1878), 3 Q. B. D. 446; 42 J. P. 807. But see now the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5215, which prescribes the procedure for assessment of compensation where land is compulsorily acquired for public purposes.

Form of notice for arbitration, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

Service of a subsequent notice to treat in respect of a larger piece of land does not put an end to the arbitration agreed upon in respect of the compensation payable for the smaller (*Rebeck v. Bournemouth Corporation*, *Times*, March 17th, 1902). Where an owner of two contiguous pieces of land forming an area suitable, and it may be best suited, for development and use as one building site, sells under compulsion a part of one piece as a part of that piece, and without any reference to his interest in the other piece, the purchase price for the land so contracted to be sold must be calculated without reference to the vendors interest in the other piece, and is not to be ascertained by deducting the value of what is left to the owner of the two pieces after the sale from their aggregate value immediately prior to the sale (*Re S. E. Rail. Co. and L. C. C.*, [1915] 2 Ch. 252; 79 J. P. 545; 11 Digest 124, 156).

(b) The umpire has a period of three months from the time when the arbitration devolves upon him (*Skerratt v. North Staffordshire Rail. Co.* (1848), 17 L. J. Ch. 161; 11 Digest 191, 708; *In re Bradshaw* (1848), 12 Q. B. 562; *In re Pullen and the Mayor of Liverpool* (1882), 51 L. J. Q. B. 285; 46 J. P. 468). The parties may by consent extend the time. The court can also extend the time for making the award even after the expiration of the three months (*In re Dare Valley Rail. Co.* (1869), 4 Ch. App. 554; 11 Digest 191, 714; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 403; 11 Digest 193, 727; *Warburton v. Haslingden L. B.* (1879), 48 L. J. Q. B. 451; 2 Digest 565, 1965; *Arbitration Act*, 1889, s. 9, *post*, p. 4790; *Knowles & Sons, Ltd. v. Bolton Corporation*, [1900] 2 Q. B. 253; 2 Digest 420, 722).

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the

Method of proceeding for settling disputes as to compensation by justices.

Section 24. summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof (a).

(a) A settlement by justices under this section of the compensation due to any person is not an order within S. J. Act, 1848, s. 11, and need not be made within six months (*R. v. Edwards* (1884), 13 Q. B. D. 586; 49 J. P. 117; 11 Digest 189, 697, overruling *Re Edmundson* (1851), 17 Q. B. 67; 15 J. P. 674).

Appointment of arbitrators when questions are to be determined by arbitration.

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator (a), each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking (b) under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties (c), and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final.

(a) Form of appointment of single arbitrator, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

(b) Form of appointment of arbitrator by promoters, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts"; the like under protest, *ibid.* Form of notice by promoters and request to appoint, *ibid.*

(c) Form of appointment of arbitrator to act for both parties where one party has failed to appoint, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

Vacancy of arbitrator to be supplied.

26. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing (a) some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

(a) Form of appointment of arbitrator in place of one who has died, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

A pointment of umpire.

27. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing (a) under their hands an umpire to decide on any

such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special Act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final. Section 27

(a) Form of appointment of umpire, Encyclopædia of Forms and Precedents, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade, *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case* (a), shall, on the application (b) of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators.

(a) These words are repealed by Lands Clauses (Umpire) Act, 1883, *post*, p. 4664.

(b) Form of request to Board of Trade to appoint umpire, Encyclopædia of Forms and Precedents, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

29. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special Act, in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator, the matter to begin *de novo*.

30. If where more than one arbitrator shall have been appointed either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties (a).

If either arbitrator refuse to act, the other to proceed *ex parte*.

(a) The appointment of an umpire is not a condition precedent to the *ex parte* proceedings (*Shepherd v. Norwich Corporation* (1885), 30 Ch. D. 553).

31. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid (a).

If arbitrators fail to make their award within twenty-one days, or extended time, the matter to go to the umpire.

(a) Form of extension of time for award, Encyclopædia of Forms and Precedents, Vol. IX., title "Lands and Railways Clauses Consolidation Acts". The umpire's duty devolves upon him at the expiration of the time named, and the time within which he must make his award runs from that date, whether or not he has received notice of the failure of the arbitrators to make their award (*Skerratt v. North Staffordshire Rail. Co.*, *ante*, p. 4113). By consent the umpire may sit with the arbitrators and make his award within the time of the arbitrators for making their award. See form of consent, Encyclopædia of Forms and Precedents, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Power of arbitrators to call for books, etc.

Section 33. 33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice (a) make and subscribe the following declaration; that is to say,

Arbitrator or
umpire to make
a declaration.

"I A. B. do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [naming the special Act.]

"A. B.

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor (b).

(a) That is, any justice, not merely one having jurisdiction where the lands are situated (*Davies v. South Staffordshire Rail. Co.* (1851), 21 L. J. M. C. 52; 15 Jur. 1133).

(b) As to when a failure to make this declaration will be a ground for setting aside the award, see *Levick v. Epsom, etc. Rail. Co.* (1859), 1 L. T. 60; 11 Digest 192, 718, and cf. *Ludlow Corporation v. Prosser* (1906), 70 J. P. 400; 4 L. G. R. 940; 38 Digest 175, 175. As to the time within which the declaration may be made, see *In re Bradshaw* (1848), 12 Q. B. 562.

Costs of
arbitration,
how to be
borne.

34. All the costs of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (a).

(a) The section contemplates nothing more than an offer of money (*Fisher v. G. W. Rail. Co.*, [1911] 1 K. B. 551). The right to costs depends upon the section, and not upon the provisions of the P. H. A. (*Ex parte Rayner, ante*, p. 4113). The section, however, only applies to a competent arbitration under the Act, and if there is no jurisdiction to hold the arbitration the promoters can be under no liability for costs (*L. & N. W. Rail. Co. v. Walker*, [1903] A. C. 289; 11 Digest 156, 372). The section applies to an offer made generally under s. 38, notwithstanding notice by the claimant under s. 23 (*Lascelles v. Swansea School Board* (1899), 63 J. P. 742; 69 L. J. Q. B. 24). If an offer is made but refused, and afterwards during the arbitration withdrawn by consent, and the subsequent award is less than the offer, the promoters of the undertaking cannot claim the benefit of this section (*Foster v. Sheffield Corporation* (1895), 59 J. P. 404; 72 L. T. 549). But if the award is not in respect of the same subject-matter as the offer, the claimant is entitled to costs, although the award is less than the offer (*Miles v. G. W. Rail. Co.*, [1896] 2 Q. B. 432; 11 Digest 200, 797). Thus, where a claim was made against a railway company for compensation in respect of the diversion of a footpath and the company offered £50 in settlement of the claim upon the understanding that they would construct a new road it was held that the claimant was entitled to the costs of arbitration proceedings although he was awarded only £50 thereunder (*Fisher v. G. W. Rail. Co., supra*). Where costs are awarded, the execution of a conveyance is not a condition precedent to the payment of such costs (*Capell v. G. W. Rail. Co.* (1883), 11 Q. B. D. 345; 11 Digest 202, 818). As to statement of a special case by the arbitrator, see Arbitration Act, 1889, s. 7, *post*. And as to costs, see s. 20, *ibid.*, *post*, and *In re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 11 Digest 131, 197. Costs not included in the award cannot be afterwards given by the arbitrator (*South Minnors R. D. C. v. Barnet U. D. C.* (1900), 82 L. T. 421; 33 Digest 26, 122).

As to the taxation of the costs, see Lands Clauses (Taxation of Costs) Act, 1895; *Re Cannings and Middlesex C. C.*, [1907] 1 K. B. 51; 71 J. P. 46; Digest, Practice 947, 4871, and the note to s. 35, *infra*. The taxing master's certificate disallowing fees charged by the arbitrator and umpires is not evidence that such fees are unreasonable or extortionate, and it must be shown that they are so in order that any part may be recovered back after payment in order to take up the award (*Llandrindod Wells Water Co. v. Hawksley* (1904), 68 J. P. 242; 20 T. L. R. 241; 11 Digest 202, 813). The function of the taxing master is ministerial only, not judicial, therefore his certificate cannot be quashed on *certiorari* (*R. v. Goff*, [1905] 2 I. R. 121; 11 Digest 201, *w*).

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose (a). **Section 35.**

Award to be delivered to the promoters of the undertaking.

(a) Form of award, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts". The promoters of the undertaking, though they have joined in the arbitration under protest, are bound to take up the award, and may be compelled to do so by *mandamus* (*L. & N. W. Rail. Co. v. Walker*, [1900] A. C. 109; 64 J. P. 483; 11 Digest 195, 749). But it is a good return that the prosecutor is not entitled to any compensation at all by reason that the lands alleged to be injuriously affected have not been so affected (*R. v. Cambrian Rail. Co.* (1869), L. R. 4 Q. B. 320; 11 Digest 195, 752). And if a protest on the ground of want of jurisdiction is upheld the promoters will not be liable to costs (*L. & N. W. Rail. Co. v. Walker*, [1903] A. C. 289; 11 Digest 156, 372). On taking up the award and paying the amount fixed by the arbitrator for so doing, including a bill of costs of solicitors employed by the umpire to draw up the award, the promoters are entitled to an order for taxation of such bill under s. 38 of the Solicitors Act, 1843 (*Re Collyer-Bristow & Co.*, [1901] 2 K. B. 839; 11 Digest 199, 784). The order may be made in any division of the High Court (R. S. C., Order LXV., r 26A). The process of enforcing the award remains under the Lands Clauses Consolidation Act, 1845, notwithstanding s. 13 (1) of the Light Railways Act, 1896 (*R. v. Barton and Immingham Light Rail. Co., Ex parte Simon*, [1912] 3 K. B. 72; 76 J. P. 344).

36. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties (a). **Submission may be made a rule of court.**

(a) This does not enable an award to be enforced by motion (*Re Newbold and Metropolitan Rail. Co.* (1863), 14 C. B. (N. S.) 405; *Re Walker and Beckenham L. B.* (1884), 48 J. P. 264; 50 L. T. 207; 11 Digest 198, 772). An award may be enforced under s. 12 of the Arbitration Act, 1889, *post*, p. 4791, or by action. A claim for compensation under s. 68 is capable of assignment, and the assignee may bring an action in his own name to enforce the award (*Dawson v. G. N. Rail. Co.*, [1905] 1 K. B. 260; 69 J. P. 29; 8 Digest 432, 96). The period within which an action may be brought to enforce the award is six years from the date of the award (*Turner v. Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 283; 32 Digest 327, 133).

37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form (a). **Award not void through error in form**

(a) But it may be set aside if it include compensation in respect of a claim not legally enforceable (*Beckett v. Midland Rail. Co.* (1865), L. R. 1 C. P. 241; 11 Digest 198, 769). This case was considered in *Campbell v. Paddington Corporation*, [1911] 1 K. B. 869; 75 J. P. 277; 26 Digest 429, 1483, when it was decided that where a nuisance is created by the erection of an unauthorised structure in a highway and special damage is thereby caused to a person by reason of the view from his house being obstructed, he is entitled to recover damages from the persons creating the nuisance. See also *Duke of Buccleuch v. Metropolitan Board of Works* (1868), L. R. 3 Ex. 306; *Re Hurley and Queenstown U. D. C.* (1913), 47 Ir. L. T. 117. By proceeding to arbitration the undertakers waive any misdescription of the claimant's interest (*Lovering v. City of London, etc., Subway Co.* (1891), 7 T. L. R. 600; 11 Digest 225, 1105).

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days notice to the other party of their intention to cause such jury to be summoned; and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works (a). **Promoters of the undertaking to give notice before summoning a jury.**

(a) This section does not apply where the promoters have already taken or injuriously affected land in respect of which no compensation has been made, and the section is not incorporated with s. 68, which is applicable to such cases (*Re Haywood and Metropolitan*

**Note to
Section 38.**

Rail. Co. (1864), 4 B. & S. 787; 28 J. P. 182; 11 Digest 203, 324). An irregularity in complying with this section may be waived. See *Emmanuel Hospital v. Metropolitan District Rail. Co.* (1869), 19 L. T. 692. See also *R. v. Manley Smith* (1892), 56 J. P. 729; 67 L. T. 197. The offer may be accepted at any time before verdict, and in such case the jury should be directed to return a verdict for the amount of the offer (*R. v. High Bailiff of Westminster*, [1903] 2 K. B. 189; 67 J. P. 302). And further, as to this offer, see the notes to s. 51, *post*, p. 4121.

Form of notice by promoters of intention to summon jury, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

Warrant for
summoning
jury to be
addressed to
the sheriff;

or in certain
cases to coroner,
or to ex-sheriff
or ex-coroner.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant to the sheriff, requiring him to summon a jury for that purpose (a), and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested (b) in the matter in dispute such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate; and if all the coroners of such county be so interested such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

(a) Separate juries cannot be summoned in respect of each different property of the same owner included in the notice to treat (*Ecclesiastical Commissioners v. Commissioners of Sewers of City of London* (1872), 14 Ch. D. 305; 11 Digest 297, 2280). A special jury can be had on proper notice under s. 54, *post*, p. 4122.

(b) As to the interest of the sheriff, see *R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1867), L. R. 2 Q. B. 336; 31 J. P. 453; 11 Digest 204, 828.

Provisions
applicable to
sheriff to apply
to coroner, or
other person
acting in place
of sheriff.

40. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Jury to be
summoned.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him (a).

(a) The sheriff must summon a fresh jury if the first inquisition has been quashed (*Horrocks v. Metropolitan Rail. Co.* (1865), 19 C. B. (N. S.) 139). A verdict will not be set aside on the ground that some of the jurymen were not qualified, the remedy in such case being by challenge (*In re Chelsea Waterworks Co.* (1855), 10 Exch. 731).

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn (a); and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array. **Section 42.**
Jury to be empanelled.

(a) See Juries Act, 1825, s. 26; 10 Halsbury's Statutes 55. That section is not repealed by the Juries Act, 1922.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law (a); and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question; and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts. Sheriff to preside.
Witnesses to be summoned.
View by jury.

(a) "These words were clearly intended to regulate the general course of the proceedings, to remove doubts concerning the right to begin, and to show in other respects how the inquiry should be conducted": *per* Lord DENMAN, C.J., in *R. v. Gardner* (1837), 6 A. & E., at p. 117. See also *R. v. Sheriff of Warwickshire* (1841), 2 Rail. Cas. 661.

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by the sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and in addition to the penalty hereby imposed every such jurymen shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts. Penalty on sheriff and jurors for default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds. Penalty on witnesses making default.

46. Not less than ten days notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party (a). Notice inquiry.

(a) Form of notice, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

Section 47.

If claimant makes default compensation to be determined by surveyor.

Jury to be sworn.

Sums to be paid for purchase of lands, and for damage, to be assessed separately.

47. If the party claiming compensation shall not appear at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage; and the sheriff shall administer such oaths as well as the oaths of all persons called upon to give evidence.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith (a).

(a) These provisions are directory only (*Re Bradshaw* (1848), 12 Q. B. 562.

As to the power of the court to quash a verdict for misdirection or improper rejection of evidence, see *Streatham and General Estates Co. v. Commissioners of Public Works* (1888), 52 J. P. 615; 11 Digest 130, 188.

Lands may be held with lands taken within the meaning of this section though not actually adjoining (*Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; 53 J. P. 756, 11 Digest 135, 216). See also *Re S. E. Rail. Co. & L. C. C.*, ante, p. 4113; and *Holditch v. Canadian Northern Ontario Ry.*, cited in the note to s. 63, post, p. 4124.

For a case in which a residence was held to be "held with" lands purchased in respect of which the owner of the residence had no option, see *Oppenheimer v. Minister of Transport*, [1942] 1 K. B. 242; [1941] 3 All E. R. 485.

Verdict and judgment to be recorded.

50. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury (a); and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere; and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies (b).

(a) Where a claimant has given particulars of his claim with items, he is not bound by such particulars, and the jury may award him more in respect of any particular item than the sum actually claimed in respect of it. It is doubtful, however, whether the verdict may be for a greater total sum than the total amount claimed (*Robertson v. City and South London Rail. Co.* (1904), 68 J. P. 280). Interest is payable not from date of verdict, but from the time when the promoters might prudently have taken possession, i.e., in a case where the title has not been accepted before verdict, when a good title is shown (*In re Pigott and G. W. Rail. Co.* (1881), 18 Ch. D. 146; 11 Digest 226, 1125, disapproving *Re Eccleshill L. B.* (1879), 13 Ch. D. 365).

(b) Form of verdict, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

The recording of the verdict and judgment is not a condition precedent to their validity

(*Chabot v. Lord Morpeth* (1850), 15 Q. B. 446). And if not recorded, parol evidence may be given of the finding, and of the grounds on which it proceeded (*Manning v. Eastern Counties Rail. Co.* (1843), 12 M. & W. 237; 8 J. P. 107; 22 Digest 310, 3020). The record is available as a title, no conveyance being necessary on possession being taken by the promoters after payment of the sum assessed (*Bruce v. Willis* (1840), 11 A. & E. 463; 4 J. P. 152; 38 Digest 511, 650). And the verdict and judgment may be enforced by *mandamus*, although the record is a record of quarter sessions (*R. v. Nottingham Old Waterworks Co.* (1837), 6 Ad. & El. 355; 1 J. P. 244; 16 Digest 280, 922).

Note to
Section 50.

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered (a) by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry (b).

Costs of the
inquiry, how to
be borne.

(a) This applies only to an offer made under s. 38 (*R. v. Manley Smith* (1883), 12 Q. B. D. 481).

(b) The claimant is not entitled to any costs if an award is made in his favour in respect of a claim for which he has no right to compensation (*Todd v. Metropolitan District Rail. Co.* (1871), 24 L. T. 435; 19 W. R. 720). As to the offer of compensation, see s. 38, *ante*, p. 4117. As to costs of an abortive inquiry, see *R. v. North London Rail. Co.* (1881), 51 L. J. Q. B. 241; 30 W. R. 272. The conveyance by the owner is not a condition precedent to the payment of costs due to him (*Capell v. G. W. Rail. Co.* (1882), 9 Q. B. D. 459; 47 J. P. 246; on appeal (1883), 11 Q. B. D. 345; 11 Digest 202, 818). Where the sum awarded was paid into court and the taxed costs paid to the claimant who afterwards was found to have no title, it was held that the costs so paid could not be recovered back (*London C. C. v. Campbell* (1890), 6 T. L. R. 420).

52. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry (a).

Particulars of
the costs.

(a) The Chancery taxing masters whose office is amalgamated with and who are themselves transferred to the Central Office by general rules pursuant to the Supreme Court of Judicature (Officers) Act, 1879, which came into operation on January 11th, 1902, now have jurisdiction to tax these costs (*Covington v. Metropolitan District Rail. Co.*, [1903] 1 K. B. 231; 16 Digest 182, 877). The decision of the master cannot be reviewed (*Sandback Charity Trustees v. North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1).

See also as to the taxation of the costs the Lands Clauses (Taxation of Costs) Act, 1895, *post* p. 4938.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly (a); and if any such costs shall be payable by the owner of the lands, or of any interest therein the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall

Payment of
costs.

Section 53. exceed the amount of the money so awarded or determined the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

(a) On proof of the allocatur, of the demand for payment, and non-compliance within seven days, the justice is bound to issue his warrant (*Metropolitan Rail. Co. v. Turnham* (1863), 14 C. B. N. S. 212; 11 Digest 210, 931). As regards the warrant and its execution the S. J. Acts will apply. See, particularly, the S. J. A., 1879, ss. 39 (4) and 43 (1), (8); 11 Halsbury's Statutes 344, 346, 347.

Special jury to be summoned at the request of either party.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him, for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty in the manner used and accustomed by the proper officers of the superior courts (a).

(a) Form of warrant for special jury, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts"; Form of notice of time and place of nomination, *ibid.*

The special jury must be summoned if notice is given within twenty-one days limited by s. 68 without any further extension of time (*Glyn v. Aberdare Valley Rail. Co.* (1859), 6 C. B. (N. S.) 359).

Deficiency of special jurymen.

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury; and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Other inquiries before same special jury by consent.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

57. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

58. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practicable surveyor as two justices shall nominate for that purpose as hereinafter mentioned.

Section 58.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

59. Upon application (a) by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party fail to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands (b), nominate an able practicable surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing, subscribed by him, of the correctness thereof.

Two justices to nominate a surveyor.

(a) Form of application, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

(b) Form of nomination, *Encyclopædia of Forms and Precedents*, *ubi supra*. This need not specify the lands to be valued (*Poynder v. G. N. Rail. Co.* (1847), 16 Sim. 3; 16 L. J. Ch. 444; 11 Digest 220, 1049).

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

Declaration to be made by the surveyor.

"I A. B. do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

" A. B.

"Made and subscribed in the presence of . . ."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Valuation, etc. to be produced to the owner of the lands on demand.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Expenses to be borne by promoters.

63. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith (a).

Purchase-money and compensation, how to be estimated.

**Note to
Section 63.**

(a) Compensation under this section may be awarded in one sum (*In re Bradshaw* (1848), 12 Q. B. 562; 11 Digest 190, 703). It must always be assessed on the basis of the value to the particular claimant of the lands taken or injuriously affected (*Bailey v. Isle of Thanet Light Rails. Co.*, [1900] 1 Q. B. 722), and not with reference to the value to the persons taking them, see *Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; 35 J. P. 437; 7 Digest 550, 284 (churchyard). The latter case was cited as an authority to show that when a public body compelled a man to part with his property for public purposes, they ought to pay him what the property was worth to him because he was not a willing seller, and *Keeble v. J.*, upheld this contention (*In re Smart and Stepney Borough Council* (1903), 25 M. C. C. 56). See also *Re Morgan and L. & N. W. Rail. Co.*, [1896] 2 Q. B. 469 (public park); *Trent-Stoughton v. Barbados Water Supply Co.*, [1893] A. C. 502; 43 Digest 1069, k (streams of water); *Re Gough and Aspatria, Silloth and District Joint Water Board*, [1904] 1 K. B. 417; 68 J. P. 229; 11 Digest 127, 168; *Re Tynemouth Corporation and Duke of Northumberland* (1903), 67 J. P. 425; 89 L. T. 557; *Re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; 72 J. P. 437; 11 Digest 127, 169 (land for reservoir); *City and South London Rail. Co. v. United Parishes of St. Mary Woolnoth and St. Mary Woolchurch Haw*, [1905] A. C. 1; 69 J. P. 101; 11 Digest 125, 159 (site of church). See also as to "special adaptability," *Cedars Rapids. etc. Co. v. La Coste*, [1914] A. C. 569; 30 T. L. R. 293; 11 Digest 130, 187; *Sidney v. N. E. Ry.*, [1914] 3 K. B. 629; 11 Digest 128, 171. These cases were considered in *Fraser v. Fraserville City*, [1917] A. C. 187; 11 Digest 124, e. It was there decided that the value to be ascertained is the value to the seller of his property in its actual condition at the time of expropriation with all its existing advantages, and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired, the question of what is the scheme being a question of fact for the arbitrator in each case. See also *Pastoral Finance Association v. The Minister*, [1914] A. C. 1083; 11 Digest 127, n, as to the elements to be considered in ascertaining the value of the land to the seller. And on the same question see *per Eve, J.*, in *Re S. E. Ry. and L. C. Co.*, [1915] 2 Ch. at p. 258; 11 Digest 124, 156. A claim for disturbance of business cannot be made where the value of the land is estimated by reference to its value as building land available for development (*Horn v. Sunderland Corporation*, [1941] 2 K. B. 26; [1941] 1 All E. R. 480). The Acquisition of Land (Assessment of Compensation) Act, 1919, s. 2 (3), *post*, p. 5217, which provides for the assessment of compensation in respect of lands acquired compulsorily for public purposes, provides that the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser, or the requirements of any Government Department or any local or public authority; provided that any bona fide offer for the purchase of the land made before the passing of the Act which may be brought to the notice of the arbitrator, shall be taken into consideration. And see, as to the effect of this clause, *Percival v. Peterborough Corporation*, [1921] 1 K. B. 414; 85 J. P. 77; 11 Digest 128, 173; *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299; 36 T. L. R. 834.

As to the compensation payable in respect of land held subject to restrictions, see *Corrie v. MacDermott*, [1914] A. C. 1056; 11 Digest 124, 157. And as to the case where the owner holds adjoining properties of which part of one only is acquired, see *S. E. Rail. Co. v. L. C. Co.*, *ante*, p. 4113.

Compensation is payable under this section in respect of land not taken which is the property of a person some of whose other land is taken, but which is separated from the land taken by intervening land belonging to other owners, *e.g.*, a line of railway (*Cowper Essez v. Acton L. B.* (1888), 14 App. Cas. 153; 53 J. P. 756; 11 Digest 135, 216). The case last mentioned was distinguished in *Holditch v. Canadian Northern Ontario Ry.*, [1916] 1 A. C. 536; 11 Digest 131, z. So where windows were obstructed, some of which were ancient lights and some not, it was held that compensation must be paid in respect of the whole (*Re L. T. & S. Rail. Co. and Gower's Walk Schools (Trustees)* (1889), 24 Q. B. D. 326; 11 Digest 144, 287). But no compensation is payable in respect of land not taken where no other land belonging to the claimant is taken or used for the purposes of the undertaking (*Horton v. Colwyn Bay and Colwyn U. D. C.*, [1908] 1 K. B. 327; 72 J. P. 57; 11 Digest 135, 223; *R. v. Mountford*, [1906] 2 K. B. 814; 70 J. P. 511; 11 Digest 135, 219), unless there is a special agreement to that effect (*Re L. & N. W. Rail. Co. and Reddaway* (1907), 71 J. P. 150; 23 T. L. R. 279).

See also as to damage by severance, *R. v. Brown* (1867), L. R. 2 Q. B. 630; 32 J. P. 54; 11 Digest 125, 160; *Re Gonty and Manchester, Sheffield, and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 11 Digest 131, 197; *Ripley v. G. N. Rail. Co.* (1875), 10 Ch. App. 435; 11 Digest 126, 161.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the Bank under the provisions herein contained, by reason that

the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing (a) to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Section 64.

determined by a surveyor, the party may have the same submitted to arbitration.

(a) Form of notice, Encyclopædia of Forms and Precedents, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Question to be submitted to the arbitrators.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered, with costs, by action or suit in any of the superior courts.

If further sum awarded promoters to pay or deposit same within fourteen days.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Costs of the arbitration.

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected (a) by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing (b) to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts (c).

Compensation to be settled by arbitration or jury, at the option of the party claiming compensation.

**Note to
Section 68.**

(a) The damage awarded under this section must be damage in respect of which an action would have lain but for the statutory powers justifying it, and must arise from the execution of the works, not from the use of them when executed (*Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 31 J. P. 484; 11 Digest 140, 265; *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 34 J. P. 36; 11 Digest 106, 28; *E. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358; 33 J. P. 710; 11 Digest 142, 271; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 38 J. P. 820; 11 Digest 142, 272; *Buccleuch (Duke) v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 36 J. P. 724; 11 Digest 134, 215; *Caledonian Rail. Co. v. Walker's Trustees* (1881), 7 App. Cas. 259; 46 J. P. 676; 11 Digest 140, 259; *Canadian Pacific Co. Rail. v. Roy*, [1902] A. C. 220; 38 Digest 27, 142; but see *University College, Oxford v. Secretary of State for Air*, [1938] 1 K. B. 648; [1938] 1 All E. R. 69; Digest Supp. For the numerous cases decided upon this section reference should be made to Browne and Allan on Compensation.

Work executed on land appropriated under s. 163 of the L. G. A., 1933, *ante*, p. 989, is to be deemed for purposes of this section to have been authorised by the enactment or statutory order under which the land was acquired (s. 163 (2), *ibid.*, *ante*, p. 992).

A county council, in the exercise of statutory powers, compulsorily acquired from a freeholder one-third of his land upon which two cottages were standing. This part of the premises constituted a strip thereof fronting a public road. The freeholder elected to retain the remaining two-thirds of his property. The council also acquired the leasehold interest in the whole of the property and pulled down all the cottages and not merely the two which stood on the strip. Upon action by the freeholder to enforce his right of re-entry and for damages for breach of covenants, it was held that the remedy by compensation under this section was not applicable as the damage was not the result of the proper exercise of statutory powers (*Piggott v. Middlesex C. C.*, [1909] 1 Ch. 134; 72 J. P. 461; 31 Digest 430, 5754). Compensation can only be awarded in respect of an interest in lands, therefore a contract merely giving exclusive personal rights cannot be the basis of a claim for compensation (*Warr & Co., Ltd. v. L. C. C.*, [1904] 1 K. B. 713; 68 J. P. 335; 11 Digest 124, 155; *Walton Harvey, Ltd. v. Walker and Homfrays, Ltd.*, [1931] 1 Ch. 145; 29 L. G. R. 64).

A house may have a special value, e.g., a hotel or public-house, and if so, the owner is entitled to be compensated for depreciation in value of the house as having that special value (*Re Wadham and N. E. Rail. Co.* (1885), 16 Q. B. D. 227; 49 J. P. 599; 11 Digest 141, 266).

As to compensation for the right of a local authority to access to a sewer, see *Birkenhead Corporation v. L. & N. W. Rail. Co.* (1885), 15 Q. B. D. 572; 50 J. P. 84; 41 Digest 20, 156. But see also *Thurrock, Grays, etc. Sewerage Board v. Goldsmith* (1914), 79 J. P. 17; 41 Digest 20, 157, where that case was distinguished, and see as to the application of the Acquisition of Land, etc., Act, 1919, *post*, p. 5215, to the assessment of compensation for laying a sewer in private land under s. 16, P. H. A., 1875 (now repealed), *Thurrock, Grays, etc. Sewerage Board v. Thames Land Co.* (1925), 90 J. P. 1; 23 L. G. R. 648; Digest Supp.

Compensation is payable for injuriously affecting land during the execution of the works if the injury is sufficient to lessen the value of the property (*Ford v. Metropolitan Rail. Co.* (1886), 17 Q. B. D. 12; 50 J. P. 661; 11 Digest 143, 276).

As to compensation for a subsequent alteration in the construction of the works, see *Att.-Gen. v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384; 58 J. P. 348; 38 Digest 49, 235.

As to compensation for cutting off access to houses, see *Furness Rail. Co. v. Cumberland Co-operative Society* (1885), 49 J. P. 292; 11 Digest 139, 258, and cf. *Re G. N. Rail. Co. and London C. C.* (1907), 72 J. P. 1; 98 L. T. 116; 11 Digest 131, 194.

As to compensation for injuriously affecting ancient lights, when the Act authorised the purchase of easements, see *Wigram v. Fryer* (1887), 36 Ch. D. 87; 42 Digest 666, 772.

Where a lessee, pursuant to a power in his lease, determined his lease before injury had actually been done to him, it was held that he could not recover compensation by reason of his having had to remove to other premises (*R. v. Poulter* (1887), 20 Q. B. D. 132; 52 J. P. 244; 11 Digest 149, 323). If the reversion expectant on the determination of a lease is acquired by arrangement, but the lessee's interest is not acquired, and he is afterwards injuriously affected by the works, his remedy for breach of the covenant for quiet enjoyment is by compensation, not by action (*Manchester, Sheffield, and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 394; 11 Digest 146, 299). The mere probability of the continuance of a tenancy without disturbance is not ground for compensation (*Lynch v. Glasgow Corporation* (1903), 5 F. (Ct. of Sess.) 1154; 11 Digest 276, 2040 ii).

For a case of "injuriously affecting," by reason of dealing with a highway, so as to divert the traffic, see *Metropolitan Board of Works v. Howard* (1887), 5 T. L. R. 732; and as to interfering with a private occupation road, see *Barnard v. G. W. Rail. Co.* (1902), 36 J. P. 568; 86 L. T. N. S. 798; and as to interference with a private wharf, see *Hewett v. Essex C. C.* (1928), 138 L. T. 742.

As to injuriously affecting mills by taking water, see *Page v. Kettering Waterworks Co.* (1892), 8 T. L. R. 228. A contention that this section could not apply in the case of acquisition of land was rejected in *Wright v. Air Council* (1929), 143 L. T. 43; Digest Supp.

An option to purchase is an interest in land within this section (*Oppenheimer v. Minister of Transport*, [1942] 1 K. B. 242; [1941] 3 All E. R. 485).

As to compensation in respect of reserved water rights, see *Re Simeon and Isle of Wight R. D. C.*, [1937] Ch. 525; [1937] 3 All E. R. 149; Digest Supp.

Compensation is not payable in respect of loss of profits where part of a building estate is acquired by a local authority (*George Wimpey & Co., Ltd. v. Middlesex C. C.*, [1938] 3 All E. R. 781; Digest Supp.).

(b) Form of notice, *Encyclopædia of Forms and Precedents*, Vol. IX., title "Lands and Railways Clauses Consolidation Acts".

(c) A claim for compensation under this section is capable of assignment (*Dawson v. G. N. Rail. Co.*, [1905] 1 K. B. 260; 69 J. P. 29; 8 Digest 432, 96). The period within which an action may be brought is six years from the date of the award (*Turner v. Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 283; 32 Digest 327, 133).

And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows :

**Note to
Section 68.**

*Application of
compensation.*

69. If the purchase money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery (b) to be placed to the account there of such Accountant-General, ex parte the promoters of the undertaking, (describing them by their proper name,) in the matter of the special Act, (citing it,) pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Purchase money or compensation payable to parties under disability (a) amounting to £200 to be deposited in the Bank.

In the purchase or redemption of the land tax (c), or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes (d); or

*Application of
moneys
deposited*

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled (e); or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct (f); or

In payment to any party becoming absolutely entitled to such money (g).

(a) See note (a) to s. 7, on p. 4108, *ante*.

(b) Now the Accountant-General of the Supreme Court (Supreme Court of Judicature (Consolidation) Act, 1925, s. 133; 4 Halsbury's Statutes 183). Some words are here repealed by the S. L. R. A., 1892.

Where purchase money or compensation payable under Part VII. of the L. G. A., 1933, by a local authority in respect of land acquired from another local authority, would, but for s. 177 of that Act, be required to be paid into court under this section, such money may, if the M. of H. consents, instead of being paid into court be paid and applied as the Minister may determine (L. G. A., 1933, s. 177 (1), *ante*, p. 1004).

(c) A tenant for life having redeemed before the passing of the special Act may be reimbursed (*Ex parte Northwick* (1834), 1 Y. & C. Ex. 166; 30 Digest 312, 124). Costs of the purchase or redemption are chargeable on the promoters under s. 80, *post*, p. 4132. (*Re L. B. & S. C. Rail. Co.* (1854), 18 Beav. 608).

(d) As to what constitute incumbrances, see *Ex parte Lockwood* (1851), 14 Beav. 158 (inclosures expenses); *Ex parte Sheffield Corporation* (1855), 25 L. J. Ch. 587; 4 W. R. 70 (existing lease); *Re Brasher's Trust* (1856), 6 W. R. 406; *Ex parte London Corporation* (1868), L. R. 5 Eq. 418; 11 Digest 237, 1286 (existing leases); *Ex parte Kirkmeaton*

**Note to
Section 69.**

(1882), 20 Ch. D. 203; *Re Brewer* (1875), 1 Ch. D. 409; 11 Digest 164, 423 (rentcharges); *Re Derby Municipal Estates* (1876), 3 Ch. D. 289; 33 Digest 53, 317 (securities for loans by corporation); *Re Davis' Estate* (1858), 27 L. J. Ch. 712; 6 W. R. 844; 11 Digest 237, 1288 (statutory charge); *Re London Street, Greenwich* (1887), 57 L. T. 673 (right of re-entry); *Ex parte Tottenham* (1884), 13 L. R. Ir. 479 (tithe rentcharge); *Ex parte Ballinrobe and Claremorris Light Rail. Co. and Kenny*, [1913] 1 I. R. 519; 17 Digest 383, d (mortgages). As to other lands, see *Ex parte Lockwood* (1851), 14 Beav. 158 (inclosures expenses); *Ex parte London Corporation* (1868), L. R. 5 Eq. 418 (existing leases); *Ex parte Cambridge Corporation* (1848), 6 Hare, 30; 5 Rail. Cas. 204; 33 Digest 53, 316. As to costs when purchase-money is sought to be applied in paying off incumbrances, see *In re Dublin, Wicklow and Wexford Rail. Co.* (1890), 25 L. R. Ir. 175; 11 Digest 261, o.

(e) As to commonable land, see *Nash v. Coombs* (1868), L. R. 6 Eq. 51; 11 Digest 39, 551. Enfranchisement of copyholds is equivalent to purchase of other lands (*Re Ground's Estate* (1852), 1 W. R. 32; *Dixon v. Jackson* (1855), 25 L. J. Ch. 588; 4 W. R. 450; 11 Digest 262, 1776; *Re Cheshunt College* (1855), 1 Jur. N. S. 995; 3 W. R. 638). As to purchase of leaseholds instead of freeholds, see *Re Rehoboth Chapel* (1874), L. R. 19 Eq. 180; 19 Digest 541, 4015. An equity of redemption cannot be purchased (*Ex parte Macaulay* (1854), 23 L. J. Ch. 815; 11 Digest 238, 1300; *Re Portadown, Dungannon, and Omagh Junction Rail. Co.* (1876), Ir. R. 10 Eq. 368; 11 Digest 238, 1293 i). As to effect of the Settled Land Act, 1882, s. 32 (now reproduced and extended in Settled Land Act, 1925, s. 76; 17 Halsbury's Statutes 914), see *Re Byron's Charity* (1883), 23 Ch. D. 171; 40 Digest 741, 2699; *Ex parte Corporation of the City of London* (1901), 45 Sol. J. 259; 8 Digest 359, 1565.

(f) See *Re Ward's Estates* (1884), 28 Ch. D. 100; *Ex parte Vicar of St. Botolph, Aldgate*, [1894] 3 Ch. 544; 19 Digest 495, 3521; *Re London C. C.*, *Ex parte Pennington* (1901), 65 J. P. 536; 84 L. T. 808; 11 Digest 241, 1350.

(g) See *In re the Parson, etc. of St. Alphage* (1886), 55 L. T. 314. The purchase-money for land belonging to a waterworks company, forming part of their pipe track, was held rightly paid into court under this section, and was ordered to be paid out to the company (*Re Chelsea Waterworks Co.* (1887), 56 L. J. Ch. 640; 56 L. T. 421). See further as to persons absolutely entitled, as corporate trustees of charity property, *Re Spurstowe's Charity* (1874), L. R. 18 Eq. 279; *Re Haberdashers' Co.* (1886), 55 L. T. 758; *Ex parte Bowman*, W. N. (1888), 179; 11 Digest 245, 1433; *Re Leeds Grammar School*, [1901] 1 Ch. 228; 65 J. P. 88; *Re Sheffield Corporation and Trustees of St. William's Roman Catholic Chapel and Schools*, [1903] 1 Ch. 208; 8 Digest 359, 1563; as dowress, *Re Hall's Estate* (1870), L. R. 9 Eq. 179; as lord of the manor, *Att.-Gen. v. Meyrick*, [1893] A. C. 1; 57 J. P. 212; 11 Digest 29, 366. It is in the discretion of the court whether money will be ordered to be paid out to trustees of settled lands (*In re Smith* (1888), 40 Ch. D. 386; 11 Digest 245, 1445). The purchase-money of lands allotted by an inclosure award to the surveyor of highways for road materials was, subject to the consent of the L. G. B., ordered to be paid out to an urban district council as being the surveyor of highways and absolutely entitled under the Sale of Exhausted Parish Lands Act, 1876 (*Re Brumby and Frodingham U. D. C.* (1904), 69 J. P. 96; 3 L. G. R. 258; 26 Digest 354, 802). A metropolitan borough council who have not obtained the consent of the L. G. B. (now M. of H.) to the sale of land as required by s. 6 (5) of the London Government Act, 1899, are not persons "absolutely entitled" (*Ex parte G. W. Rail. Co.*, [1909] W. N. 202; 74 J. P. 21; 11 Digest 246, 1457, overruling *Ex parte Woolwich Corporation*, [1908] W. N. 56). For a case of apportionment of the costs of re-investment where the petition related to two funds in court, see *Ex parte Perpetual Curate of Bilston* (1889), 37 W. R. 460. But see *Ex parte Waitford U. D. C.* (1914), 78 J. P. N. 160. An apportionment cannot be made under this section between a tenant for life and remainderman (*Re Robinson's Settlement Trusts*, [1891] 3 Ch. 129).

Order for
application and
investment
meanwhile.

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three Per Centum Consolidated or Three Per Centum Reduced Bank Annuities, or in Government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands (a).

(a) It may also be invested in any securities in which cash under the control of the court may be invested (*Ex parte St. John Baptist College, Oxford* (1882), 22 Ch. D. 93; 11 Digest 236, 1272). See R. S. C., Order XXVI., r. 17. As to the costs of investments, see s. 80, *post*, p. 4132, and notes thereto.

71. If such purchase money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the Bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the moneys so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the Bank, but it shall not be necessary to obtain any order of the Court for that purpose (a).

Section 71.

Sums from £20 to £200 to be deposited, or paid to trustees.

(a) Under this section, where a sum of £34 had been paid into court, payment out was directed to be made to a tenant for life who undertook to spend it in permanent improvements (*Ex parte Smith, Re Kells Union Guardians* (1888), 21 L. R. Ir. 346; 11 Digest 241, 1367 i).

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit; or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Sums not exceeding £20 to be paid to parties.

73. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him, absolutely for his own benefit, shall be paid into the Bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels or other accommodation works, or for assenting to or not opposing the passing of the Bill authorising the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided (a) always, that it shall be in the discretion of the Court of Chancery, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the Bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

All sums payable under contract with persons not absolutely entitled, to be paid into Bank or to trustees.

(a) For an instance of the application of this proviso, see *Re Saunderton Glebe Lands, Ex parte Saunderton (Rector)*, [1903] 1 Ch. 480.

74. Where any purchase money or compensation paid into the Bank under the provisions of this or the special Act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate

Court of Chancery may direct application of money

Section 74. in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be (a).

in respect of
leases or
reversions as
they may think
just.

(a) See *Re Barrington, Gamlen v. Lyon* (1886), 33 Ch. D. 523; 34 Digest 631, 280. This case was discussed and distinguished in *Re Robinson's Settlement Trusts*, [1891] 3 Ch. 129. A lessor having a right of re-entry in respect of non-payment of rent was held to be a person interested in compensation to the lessee paid into court, such right being an incumbrance on the leasehold interest (*Re London Street, Greenwich* (1888), 57 L. T. 673).

Upon deposit
being made,
the owners of
the lands to
convey, or in
default the
lands to vest in
the promoters
of the under-
taking upon a
deed poll being
executed.

75. Upon deposit in the Bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking; and as against such parties, and all parties on behalf of whom they are herein-before enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands (a).

(a) See note (a) to s. 160 of the L. G. A., 1933, *ante*, p. 979, as to the effect of this section where owners cannot give a good title. The promoters are bound both under the ordinary law of specific performance, and, where the property is not vested in them by the special Act, also by s. 12 of the Finance Act, 1895, to take a conveyance which must be settled by the court if the parties differ (*Re Cary-Elwes' Contract*, [1906] 2 Ch. 143; 70 J. P. 345; 17 Digest 232, 470). In a case decided under Michael Angelo Taylor's Act, 1817, it was held that a vendor is entitled to have the dimensions of the property inserted in the conveyance (*Monighetti v. Wandsworth Borough Council* (1908), 73 J. P. 91; 40 Digest 277, 2414).

Where parties
refuse to con-
vey or do not
show title, or

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof

refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the Kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, in the Bank, in the name and with the privity of the Accountant-General of the Court of Chancery (a), to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands, (describing them, so far as the promoters of the undertaking can do,) subject to the control and disposition of the said court (b).

Section 76

cannot be found, the purchase money to be deposited.

(a) Now the Accountant-General of the Supreme Court (Supreme Court of Judicature (Consolidation) Act, 1925, s. 133; 4 Halsbury's Statutes 183).

(b) See as to this and the next section, *Wells v. Chelmsford L. B.* (1880), 15 Ch. D. 108; 45 J. P. 6; 11 Digest 233, 1217.

The power conferred by this section is specifically saved by the Law of Property Act, 1925, s. 7 (3); 15 Halsbury's Statutes 189. See also sub-s. (4), *ibid.*

See also s. 42 (7), Law of Property Act, 1925, set out in note (b) to s. 9, *ante*, p. 4108.

77. Upon any such deposit of money as last aforesaid being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Upon deposit being made a receipt to be given, and the lands to vest in the promoters upon a deed poll being executed.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit (a).

Application of moneys so deposited.

(a) As to the procedure when the land is land in respect of which the purchase-money is claimed by the Crown or by other claimants, see *Ex parte Reeve, Re Manor of Lovestoft and G. E. Rail. Co.* (1883), 24 Ch. D. 253; 11 Digest 249, 1519. For the purposes of the Housing Act, 1936, this section is superseded by s. 146, *ibid.*, *ante*, p. 1744.

**Note to
Section 78.**

As to the rights of a tenant for life of settled land, see *Re Griffith's Will* (1883), 49 L. T. 161, and the Settled Land Act, 1925. As to mortgages, see *Ex parte Ballinrobe and Claremorris Light Rail. Co., Ltd., and Kenny* (1913), 47 Ir. L. T. 101; 17 Digest 383, d.

Where £400 was awarded, of which £150 was for a leasehold interest which was mortgaged, and £250 for trade damages, etc., the court ordered the £250 to be paid out at once (*Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 11 Digest 128, 177).

As to the procedure on applications for payment of money out of court, see R. S. C., Order LV., r. 2; *Ex parte London Corporation* (1883), 25 Ch. D. 384; *Ex parte Maidstone and Ashford Rail. Co.* (1883), 25 Ch. D. 168; *Re Brandram* (1883), 25 Ch. D. 366; 43 Digest 812, 2543; *Re Madgwick* (1883), 25 Ch. D. 371; *Re Callon's Will* (1884), 25 Ch. D. 240; *Ex parte Jesus College, Cambridge* (1884), 50 L. T. 583; *Re Bethlehen and Bridewell Hospitals* (1885), 30 Ch. D. 541; 30 Digest 294, 206; *Re Haworth, W. N.* (1885), 48.

As to the costs, see *Re Fisher*, [1894] 1 Ch. 450; *Re Leeds Grammar School*, [1901] 1 Ch. 228; 65 J. P. 88; *Re Kearns, Ex parte Lurgan U. D. C.*, [1902] 1 I. R. 157; *Re Schmarr*, [1902] 1 Ch. 326; 11 Digest 255, 1607; *Dublin Corporation v. Carroll* (1914), 49 Ir. L. T. 60, C. A.; 11 Digest 264, 1828 i.

An order was made for interim investment of a fund arising out of charity lands taken in *Re Stafford's Charity* (1887), 57 L. T. 846. On petition for payment out of moneys deposited for purchase of a leasehold interest, the court refused to make the order conditional on the lease being handed over (*Taylor v. Whittaker, W. N.* (1890) 9).

Party in
possession to
be deemed
the owner.

79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly (a).

(a) See *Ex parte Chamberlain* (1880), 14 Ch. D. 323, which was followed in *Re Harris, Hansler v. Harris*, [1909] W. N. 181. In the latter case it was held that a person showing title by adverse possession for twelve years after the expiration of a long term of years to land taken under the Lands Clauses Act will, in the absence of any valid claim by the reversioner, be deemed to be the owner of the land and entitled to the payment out of the purchase-money. As to the right to the value of a reversion after the expiration of a term when the reversioner is unknown, see *Gedye v. Commissioners of Works*, [1891] 2 Ch. 630; 11 Digest 242, 1384; *Re Harris, Ex parte London C. C.*, [1901] 1 Ch. 931.

Costs in cases
of money
deposited (d).

80. In all cases of moneys deposited in the Bank under the provisions of this or the special Act, or an Act incorporated therewith, except (a) where such moneys shall have been so deposited by reason of the wilful refusal (b) of any party entitled thereto to receive the same (c), or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking (d) of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities (e), and of the re-investment thereof in the purchase of other lands (f), and also the costs of obtaining the proper orders (g) for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities

whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants (*h*): Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Section 80.

(a) The court has now, by virtue of the Supreme Court of Judicature (Consolidation) Act, 1925, s. 50; 13 Halsbury's Statutes 216 (re-enacting Supreme Court of Judicature Act, 1890, s. 5), a discretionary power to order payment of costs in the excepted cases (*In re Schmarr*, [1902] 1 Ch. 326; 11 Digest 255, 1607).

(b) See *In re Jones and Cardiganshire C. C.* (1913), 57 Sol. Jo. 374; 42 Digest 2, 5.

(c) See *Re Leeds Grammar School*, [1901] 1 Ch. 228; 65 J. P. 88; *In re Dublin Corporation and Baker*, [1912] 1 I. R. 498.

(d) See note (*g*), *ante*, p. 4128, and note (*a*) to s. 82, *post*, p. 4134. Where the promoters avail themselves of this section and pay money into court they must bear all the costs of the legal steps necessary to be taken by the claimants in order to get the money paid to them. See *In re Lloyd and North London Ry. (City Branch) Act*, 1861, [1896] 2 Ch. 397; *In re Griggs, Ex parte London School Board*, [1914] 2 Ch. 547; 80 J. P. 35; 23 Digest 66, 492.

(e) See *Charlton v. Rolleston* (1884), 28 Ch. D. 237; and as to costs of brokerage, see *In re Gaslee*, [1901] 1 Ch. 923; *Re Magdalen College, Oxford*, [1901] 2 Ch. 786; 66 J. P. 23. Where a petition is presented for the payment out of court of two funds of unequal value representing the purchase-money of lands acquired by two railway companies respectively, the brokerage on selling the two funds must be borne by the two companies equally and ought not to be apportioned according to the relative amounts of the two funds (*Ex parte Emmanuel Hospital* (1908), 24 T. L. R. 261). A petition was presented to obtain payment out of a fund which represented moneys paid into court by a railway company under this section and asked further for the payment out of another fund representing proceeds of enfranchisement of copyholds, and that the costs of the petitioner and all other necessary parties might be taxed and paid by the railway company, except such amount of the costs as should be certified as arising from the inclusion in the petition of the fund representing the enfranchisement of the copyholds. It was held that there was no difference between the case and one of an application for re-investment in land, and that the order asked for as to costs was a proper one (*In re Lynn and Fakenham Railway Extension Act*, 1880, [1909] W. N. 24; 73 J. P. 163; 11 Digest 268, 1895).

(f) See *Re Gedling Rectory* (1885), 53 L. T. 244; *Drake v. Greaves* (1886), 33 Ch. D. 609; *Att.-Gen. v. St. John's Hospital, Bath*, [1893] 3 Ch. 151; Digest, Practice 898, 4389; *Re the Bishopsgate Foundation*, [1894] 1 Ch. 185; 11 Digest 270, 1952; *Re Arden* (1894), 70 L. T. 506; *Re Kearns, Ex parte Lurgan U. D. C.*, [1902] 1 I. R. 157; *Ex parte Thavie's Charity Trustees*, [1905] 1 Ch. 403; *Re Clark*, [1906] 1 Ch. 615; *Re Nepton's Charity* (1906), 22 T. L. R. 442.

(g) Where a summons is only partly successful the costs payable by the promoters must be confined to the costs of obtaining the particular order which is made (*In re Jacobs, Baldwin v. Pescott*, [1908] 2 Ch. 691). Where schools had been taken, the costs of settling a new scheme for applying the purchase-money in buying a new site and erecting fresh schools were held too remote to be recoverable under this provision (*Re St. Paul's Schools, Finsbury* (1883), 52 L. J. Ch. 454). But compare *Re Butchers' Co.* (1885), 53 L. T. 491. Where a local authority in pursuance of the compulsory powers conferred on them by the Act take land belonging to a charity, and as a direct result the trustees of the charity apply to the Charity Commissioners for a scheme for the regulation of the charity, the costs of the trustees so incurred are payable by the local authority (*In re Wood Green Gospel Hall Charity, Ex parte Middlesex C. C.*, [1909] 1 Ch. 263). The allowance of two fees for attendance before the Accountant-General, on an application under the Supreme Court Funds Rules, 1905, rr. 34, 35, for payment out of funds paid in under the Act, which originated when under the practice in Chancery under the old consolidated orders it was necessary for the solicitor to attend both before the Registrar and also before the Accountant-General, was held to be common form to-day and such fees were accordingly allowed (*In re Butler's Will, Ex parte Metropolitan Board of Works*, [1912] W. N. 50; 106 L. T. 673). See also *In re Piggyn, Ex parte Mansfield Rail. Co.*, [1913] 2 Ch. 326; 43 Digest 795, 2321, as to the persons to be made parties to a petition.

(h) A local authority as promoters acquired some land for the purposes of their under-

**Note to
Section 80.**

taking, and paid the purchase-money into court in consequence of the title to the land being in dispute. The dispute was subsequently settled without actual litigation. It was held that the costs of the negotiations for the settlement of the dispute as to the title were costs occasioned by adverse litigation within the meaning of the section (*In re Hood* and *In re West Ham Corporation Act*, 1902, [1910] W. N. 80; 74 J. P. 179).

Conveyances.

And with respect to the conveyances of lands, be it enacted as follows :

Form of conveyances (a).

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the Schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration (b), or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances, which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

(a) As to the effect of the statutory form of conveyance, see *Caledonian Ry. Co. v. Heriot's Trust*, [1915] A. C. 1046. The schedules containing the statutory forms are set out at p. 4155, *post*.

(b) See s. 5, Law of Property Act, 1925; Vol. V. and 15 Halsbury's Statutes 187.

Costs of conveyances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses, incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interest therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title (a).

(a) Costs of proving their incumbrances were refused to mortgagees of reversionary interests in the funds in court, the mortgages being subsequent to the payment into court (*Re Gough's Trusts* (1883), 24 Ch. D. 569; 35 Digest 689, 4321). But this decision was dissented from in *Re Olive's Estate* (1890), 44 Ch. D. 316; 35 Digest 689, 4322. See, as to costs of adverse litigation, *Re Outling's Estate*, W. N. (1890) 75; *Ex parte Cooper* (1865), 34 L. J. Ch. 373; 11 L. T. 661; 11 Digest 277, 2044. See, as to the right to costs in the case of a lessor having a right of re-entry in respect of unpaid rent, *Re London Street, Greenwich* (1887), 57 L. T. 673; in the case of the trustee of a settlement relating to land taken, *Re English's Settlement* (1888), 39 Ch. D. 556. As to costs of a disentailing deed, see *Re Navan and Kingscourt Rail. Co. and Fingall*, [1906] 1 I. R. 557; 11 Digest 286, 1851 i. As to the costs of successive orders for payment of dividends, see *In re Ryder* (1887), 37 Ch. D. 595; 33 Digest 210, 1170. As to costs for purpose of conveyance of copyholds under s. 95 after decease of vendor, see *Re Thames Tunnel (Rotherhithe and Ratchiff) Act*, 1900, [1908] 1 Ch. 493; 72 J. P. 153; 11 Digest 235 1258, overruling on this point *Re London United Tramways Act*, 1900, [1906] 1 Ch. 534; and of leaseholds in similar conditions, *In re Elementary Education Acts*, 1870 and 1873, [1909] 1 Ch. 55; 73 J. P. 22. As to procedure by petition or summons, see *Re Hargreave's Trust*, *Ex parte Bradford Corporation* (1888), 58 L. T. 367; *Re De Grey's Entailed Estate*, W. N. (1887), 241. The undertakers take the risk of having to pay the costs in cases where money in court is dealt with under powers contained in a settlement (*Re Brooschoff's Settlement*

1889), 42 Ch. D. 250). Undertakers were ordered to pay costs of re-investing consols in which purchase-money had been invested, on their being redeemed by Government (*Re Brown* (1890), 59 L. J. Ch. 530; 63 L. T. 131; 11 Digest 237, 1273). As to the costs of payment out when there has been a refusal to show title, see *Re St. Luke's Vestry, Middlesex*, W. N. (1889), 102. As to interest on costs and the form of order, see *Re Bird's Estate*, W. N. (1889), 182.

The costs of conveyance include costs of taking out letters of administration necessary to make a legal title (*Ex parte Keatley* (1890), 25 L. R. Ir. 265; 11 Digest 235, 1247 i; *Ex parte Kelly* (1893), 31 L. R. Ir. 137; 23 Digest 180, o; *Ex parte Rorke*, [1894] 1 I. R. 146; *Re Lloyd and North London Rail. (City Branch) Act, 1861*, [1896] 2 Ch. 397; *Re Liverpool Improvement Act* (1868), L. R. 5 Eq. 282). And see *Re Griggs, Ex parte London School Board*, [1914] 2 Ch. 547; 80 J. P. 35; 23 Digest 66, 492.

See also s. 42, Law of Property Act, 1925; Vol. V. and 15 Halsbury's Statutes 218.

Note to Section 82.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation (a).

Taxation of
costs of
conveyances.

(a) The promoters cannot tax these costs after payment (*Ex parte Somerville* (1883), 23 Ch. D. 167).

Rule 11 of Sched. I., Part 1, of the General Order under the Solicitors Remuneration Act, 1881, does not apply to vendor's costs under this section (*In re Stewart* (1889), 41 Ch. D. 494; 42 Digest 233, 2663). And see *In re Burdekin*, [1895] 2 Ch. 136; 11 Digest 236, 1263; *In re Middlesex County Light Railways Order*, 1903, [1908] W. N. 167.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows (a):

Entry on lands.

(a) The provisions of this group of sections need not be complied with in the case of land acquired for purposes of the Housing Act. See the Housing Act, 1936, s. 145 (2), *ante*, p. 1743. See also s. 157, *ibid.*, *ante*, p. 1750, which gives a power of entry similar to that given by this Act for purposes of the Housing Act. And see the exclusion of this group of sections by the Restriction of Ribbon Development Act, 1935, s. 13 (5), *ante*, p. 2029. See also the former Unemployment (Relief Works) Act, 1920, for an even more speedy method of obtaining possession of lands to be compulsorily purchased.

84. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the Bank, in the manner herein mentioned, the purchase money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days

Payment of
price to be made
previous to
entry, except
to survey, etc.

Section 84. notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof (a).

(a) It is to be observed that the promoters are empowered to enter upon the lands for the purpose of "probing or boring." They are not apparently enabled to sink and keep open for a time trial holes such as are required by the M. of H. in cases of sewage disposal schemes. A local authority should endeavour in these cases to obtain the consent of the owners and to pay for any damage that may be done. In cases of compulsory purchase, this power of entry for examination of soil does not seem to arise until the compulsory purchase powers in respect of the land have been obtained.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the Bank by way of security, as hereinafter mentioned, either the amount of purchase money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided (a) in the case of parties who cannot be found, be determined to be the value of such lands (b), or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, *with two sufficient sureties, to be approved of by two justices in case the parties differ* (c), in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the Bank for the benefit of the parties interested in such lands as the case may require, under the provisions herein contained, of all such purchase money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase money or compensation shall be paid to such party, or deposited in the Bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act (d).

(a) Section 59, *ante*, p. 4123.

(b) Including compensation for severance, etc. (*Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190).

(c) The words in italics are omitted from incorporation into an order made under the L. G. A., 1933, by reason of *ibid.*, Sched. VI., modification 1, *ante*, p. 1263.

(d) If no actual entry be made after deposit of security, then the lands cannot be considered to have been taken under this section (*R. v. Manley Smith* (1892), 56 J. P. 729; 67 L. T. 197). As to entry under this section when the time for the execution of the works was about to expire, see *Tiverton, etc. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 48 J. P. 372; 11 Digest 219, 1035, which was explained and followed in *Midland Rail. Co. v. G. W. Rail. Co.*, [1909] A. C. 445; 38 Digest 263, 70. As to entry on land when the promoters were entitled to acquire only an easement of tunnelling, see *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 19 Digest 11, 13.

Under the corresponding section of the Land Clauses Consolidation (Scotland) Act, 1845, it was held that where the owner of lands entered upon under that section dispensed

with the giving of a bond, he was nevertheless entitled to 5 per cent. interest upon the compensation from the date of the promoters entering upon his land till the compensation was paid; and was entitled to payment of such interest out of the sum deposited by the promoters (*West Highland Rail. Co. v. Place* (1894), 21 R. (Ct. of Sess.) 576; 11 Digest 231, d).

If lands are taken under this section for an unauthorised purpose the landowner can recover possession with damages for any injury done to the premises (*Batson v. London School Board* (1903), 67 J. P. 457; 20 T. L. R. 22; 19 Digest 573, 120).

Entry by mistake on lands not included in the notice to treat is a trespass, although notice to treat is subsequently given in respect of such lands (*Cardwell v. Midland Rail. Co.* 1904), 21 T. L. R. 22; 11 Digest 281, 2101).

**Note to
Section 85.**

86. The money so to be deposited as last aforesaid shall be paid into the Bank in the name and with the privy of the Accountant-General of the Court of Chancery (a), to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made the cashier of the Bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money specifying therein for what purpose and to whose credit the same shall have been paid in.

Upon deposit being made cashier to give receipt.

(a) Now the Accountant-General of the Supreme Court (Supreme Court of Judicature (Consolidation) Act, 1925, s. 133; 4 Halsbury's Statutes 183).

87. The money so deposited as last aforesaid shall remain in the Bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in Bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied, in such manner as it shall think fit, for the benefit of the parties for whose security the same shall so have been deposited (a).

Deposit to remain as a security, and to be applied under the direction of the court.

(a) On proof that the condition of the bond has been fulfilled by payment to the party to whom it was given, and that it has been delivered up to the promoters, the promoters are entitled upon petition by themselves and the obligee of the bond, to have the deposit paid out to them without showing that payment of the purchase-money of the land has been made to the persons really entitled to it (*Ex parte Midland Rail. Co.*, [1904] 1 Ch. 61; 11 Digest 222, 1073).

88. If at any time the company be unable, by reason of the closing of the office of the Accountant-General of the Court of Chancery, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the Bank by way of security as aforesaid, it shall be lawful for the company to pay into the Bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise,) such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being addressed to the Bank in that behalf, request, and upon any such payment being made the cashier of the Bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the

The company may pay the deposit-money into the Bank by way of security during the time that the office of the Accountant-General is closed.

Section 88. name of the Accountant-General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant-General accordingly, and the receipt for the said payment be given to the party making the same in the usual way, for the purpose of being filed at the Report Office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase-money.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully (a) enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices (b); and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall bonâ fide and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the Bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as herein-before mentioned, although such person may not have been legally entitled thereto.

(a) This does not include an entry under a mistaken belief of right (*Steele v. Midland Rail. Co.* (1869), 34 J. P. 502; 21 L. T. 387). See also *Hutchinson v. Manchester, Bury, and Rossendale Rail. Co.* (1846), 15 M. & W. 314; 15 L. J. Ex. 293.

(b) See s. 136, *post*, p. 4152.

Decision of justices not conclusive as to the right of the promoters.

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Proceedings in case of refusal to deliver possession of lands.

91. If in any case in which, according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly; and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession; and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same

be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly (a). Section 91.

(a) The aid of the sheriff is not necessary unless the entry is actually resisted (*Tiverton, etc. Rail. Co. v. Loosemore*). See also *In re Way and London United Tramways, Ltd.* (1908), 125 L. T. Jo. 594, the facts of which are set out at p. 4111, *ante*; *Piggott v. Middlesex C. C.*, [1909] 1 Ch. 134; 72 J. P. 461; 31 Digest 430, 5754.

92 (a). *Parties not to be required to sell part of a house, etc.*

(a) This section is excluded from those incorporated into orders for the compulsory purchase of land made under sections 160, 161 and Sched. VI. of L. G. A., 1933, *ante*, pp. 978—988, 1263; for the substituted section, see *ante*, p. 1263, which reads as follows:—

“No person shall be required to sell a part only of any house, building or manufactory, or of any land which forms part of a park or garden belonging to a house, if he is willing and able to sell the whole of the house, building or manufactory, park or garden, unless the tribunal by whom compensation is to be assessed determine that, in the case of a house, building or manufactory, such part as is proposed to be taken can be taken without material detriment to the house, building or manufactory, or, in the case of a park or garden, that such part as aforesaid can be taken without seriously affecting the amenity or convenience of the house, and, if the tribunal so determine, compensation shall be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part, and thereupon the person interested shall be required to sell to the local authority that part of the house, building, manufactory, park or garden.”

A similar provision is inserted in the Development and Road Improvement Funds Act, 1909, Sched., r. (4), *post*; the Public Works Facilities Act, 1930, Sched. I., Pt. II., 2; Vol. V. and 23 Halsbury's Statutes 777; the Agricultural Land (Utilisation) Act, 1931, s. 3, Sched. I., Pt. I.; Vol. V. and 24 Halsbury's Statutes 52, 66; the Town and Country Planning Act, 1932, s. 25 (2), Sched. III., *ante*, pp. 1951, 1903; the Special Areas (Development and Improvement) Act, 1934, s. 4, Sched. III.; 27 Halsbury's Statutes 829, 834; the Housing Act, 1936, Sched. I., 8, *ante*, p. 1776; and the Air Navigation Act, 1936, Sched. I.; 29 Halsbury's Statutes 840.

House includes curtilage and garden (*Grosvenor v. Hampstead Junction Rail. Co.* (1857), 1 De G. & J. 446; 21 J. P. 547; 11 Digest 180, 574; *Governors of St. Thomas's Hospital v. Charing Cross Rail. Co.* (1861), 25 J. P. 771; 30 L. J. Ch. 395; 11 Digest 163, 417). In one case it was held that a paddock was part of a house within this section (*Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536). So, also, two houses which communicated internally, and were used as one (*Seigenberg v. Metropolitan District Rail. Co.* (1883), 49 L. T. 554; 32 W. R. 333). But not two houses at one of which a manufactory is carried on, and at the other of which, in another street, the goods are sold (*Benington v. Metropolitan Board of Works* (1886), 50 J. P. 740; 54 L. T. 837). See *Reddin v. Metropolitan Board of Works* (1862), 4 De G. F. & J. 532; 27 J. P. 4; 11 Digest 182, 597. A structure built at one time and architecturally one building although divided by party walls into fourteen parts let separately is one building within this section (*Greswolde-Williams v. Newcastle-upon-Tyne Corporation* (1927), 92 J. P. 13; 26 L. G. R. 26). If a structure was a building within s. 92, it was immaterial whether if part is acquired the remainder will be of less or equal value after truncation (*ibid.*). The acceptance by a company's solicitor of a notice under this section to take property, which the company is not compellable to take is not binding on the company (*Treadwell v. L. & S. W. Rail. Co.* (1884), 54 L. J. Ch. 565; 42 Digest 70, 624). As to what is a manufactory, see *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425; 43 J. P. 174; 11 Digest 178, 562; *Brook v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1895] 2 Ch. 571. The case of *Richards v. Swansea Improvement and Tramways Co.*, *supra*, was considered in *Regent's Canal and Docks Co. v. London C. C.*, [1912] 1 Ch. 583; 76 J. P. 353, where it was held that the words “other building” mean other building in the nature of a house, although in ordinary language it would not be described as a house. They do not include the entire undertaking of a canal and dock company. The test whether the undertakers are compellable to take along with a garden, stables, etc., for which they have given notice to treat, a house enjoyed therewith but separated therefrom by a road, is whether the garden, stables, etc., would have passed by a conveyance of the house simply (*Kerford v. Seacombe Rail. Co.* (1888), 57 L. J. Ch. 270; 52 J. P. 487; *Allhusen v. Ealing and South Harrow Rail. Co.* (1898), 78 L. T. 396; 44 W. R. 483; 11 Digest 181, 594; *Low v. Staines Reservoirs Joint Committee* (1900), 64 J. P. 212; 11 Digest 180, 572). A notice referring to one tenement and part of another tenement, but abandoned altogether

**Note to
Section 92.**

when the owner demands that the whole of the other tenement shall be taken, cannot be treated as still existing in respect of the first-mentioned tenement (*Thompson v. Tottenham and Forest Gate Rail. Co.* (1892), 57 J. P. 181; 67 L. T. 416). On receipt of a counter-notice under this section, a notice to treat may be withdrawn, and thereupon the promoters of the undertaking will be put in the same position as if no notice to treat had ever been given by them. They may issue fresh notice to treat, and withdraw that also with the like result, as often as counter-notice is given (*Ashton Vale Iron Co. v. Bristol Corporation*, [1901] 1 Ch. 591; 11 Digest 173, 509). A notice under this section may be given even after notice of claim has been made in answer to the notice to treat, and after prolonged negotiations as to such claim (*Lavers v. London C. C.* (1905), 69 J. P. 362; 93 L. T. 233; *Pollard v. Middlesex C. C.* (1906), 71 J. P. 85; 11 Digest 183, 615). And a notice under this section may even be given after the surveyors on both sides have agreed on the compensation under the notice to treat (*Pollard v. Middlesex C. C.* (1906), 71 J. P. 85; 95 L. T. 870; 11 Digest 183, 615). When on the compulsory sale of part of a property the owner may require the promoters to purchase the whole and does so, this does not constitute a compulsory sale of the whole so as to entitle the owner to the extra allowance for compulsory sale (*Jervis v. Newcastle and Gateshead Water Co.* (1897), 13 T. L. R. 14, 312).

In issuing Provisional Orders under s. 176 of the P. H. A., 1875 (now repealed), for the compulsory purchase of lands by local authorities, the L. G. B. and M. of H. have declined to insert any provision releasing the authority from their obligation to purchase whole properties if so required under this section, but in recent legislation it has, in cases of compulsory purchase by local authorities, in many cases been left to the arbitrator to decide whether part of a building can be severed without material detriment to the remainder, and if he so decides, an owner cannot insist on the whole being taken (see *supra*).

**Intersected
lands.**

And with respect to small portions of intersected land, be it enacted as follows (a) :

(a) See *Genders v. L. C. C.*, [1915] 1 Ch. 1; 79 J. P. 121; 11 Digest 178, 563, a case which arose on the construction of a special Act which enabled the L. C. C. to acquire part of any property but so as not to interfere with the main structure of any house or building.

**Owners of
intersected
lands may
insist on sale.**

93. If any lands, not being situate in a town (a) or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

(a) *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 453; 11 Digest 181, 586. See *L. & S. W. Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 11 Digest 284, 2125; *Carington v. Wycombe Rail. Co.* (1868), 3 Ch. App. 377; 11 Digest 287, 2150.

**Promoters of
the undertaking
may insist on
purchase where
expense of
bridges, etc.,
exceeds the
value.**

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such lands (a) have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land; and any dispute as to the value of such piece of land, or as to what would be the

Section 94.

expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

(a) Whether situate in a town or elsewhere (*Eastern Counties, etc. Rail. Cos. v. Marriage* (1860), 9 H. L. Cas. 32; 11 Digest 106, 29).

And with respect to copyhold lands, be it enacted as follows (a):

Copyhold.

(a) It may be noticed here that by the Law of Property Act, 1922, all copyhold and customary tenure is abolished and all copyhold lands are enfranchised subject to compensation. See that Act printed at 3 Halsbury's Statutes 633. Ss. 95—98, which dealt with copyhold lands, are accordingly omitted.

* * * * *

And with respect to any such lands being common or waste lands, be it enacted as follows (a):

Common lands.

(a) This part of the Act has been amended in some important particulars by the Commonable Rights Compensation Act, 1882, *post*, p. 4622.

Commonable rights in respect of copyhold land, enfranchised by the Law of Property Act, 1922, are expressly saved by Sched. XII., para. (4), *ibid*.

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the Bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Compensation for common lands, where held of a manor, etc. how to be paid.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the Bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Lord of the manor, etc. to convey to the promoters of the undertaking, on receiving compensation for his interest.

Deed poll to be executed in certain cases.

Section 101. **101.** The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall (a) be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

Compensation for common lands where not held of a manor, how to be ascertained.

(a) Nevertheless an agreement entered into for the determination of the compensation otherwise than as hereinafter provided is valid and may be enforced (*Bee v. Stafford and Uttoxeter Rail. Co.* (1875), 23 W. R. 863; 11 Digest 39, 545).

A meeting of the parties interested to be convened.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee (a) to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

(a) The court has no jurisdiction to inquire whether the committee are properly constituted. It is sufficient that it is a *de facto* committee (*Salmon v. Edwards*, [1910] 1 Ch. 552; 74 J. P. 177; 11 Digest 40, 556).

Meeting to appoint a committee.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests (a), but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

(a) See *Fox v. Amherst* (1875), L. R. 20 Eq. 403; 11 Digest 39, 546; *Nash v. Coombs* (1868), L. R. 6 Eq. 51; 11 Digest 39, 551. As to apportionment in case the majority think this provision inadequate, see ss. 15—17 of the Inclosure Act, 1854; 2 Halsbury's

Statutes 555, 556. Special provisions being thereby made for the apportionment of claims, no action lies for an apportionment (*Richards v. De Winton*, [1901] 2 Ch. 566; 65 J. P. 696; settled on appeal, [1903] 1 Ch. 507; 11 Digest 40, 555; and see *Salmon v. Edwards*, [1910] 1 Ch. 552; 74 J. P. 177; 11 Digest 40, 556).

As to the application of compensation money for recreation grounds and field gardens, see the Commonable Rights Compensation Act, 1882, s. 3, *post*, p. 4623.

**Note to
Section 104.**

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

Disputes to be settled as in other cases.

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

If no committee be appointed, the amount to be determined by a surveyor.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the Bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof (a); and it shall be lawful for the Court of Chancery, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit.

Upon payment of compensation payable to commoners the lands to vest.

(a) Compliance with these provisions is a condition precedent to the right to interfere with the rights of the commoners, and if the rights of any commoner are disturbed before such compliance he may maintain an action (*Stoneham v. L. B. and S. C. Rail. Co.* (1871), L. R. 7 Q. B. 1; 11 Digest 39, 543).

And with respect to lands subject to mortgage, be it enacted as follows (a) :

Lands in mortgage.

(a) As to equitable mortgagees and their rights, see *Martin v. L. C. and D. Rail. Co.* (1866), 1 Ch. App. 501; 11 Digest 274, 2019; *R. v. Middlesex (Clerk of the Peace of)*, [1914] 3 K. B. 259; 79 J. P. 7, and *ante*, p. 4112. As to a mortgagee's rights when promoters have obtained possession without notice to him, see *Cooke v. London C. C.*, p. 4150, *post*.

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act; and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months additional interest, and thereupon such mortgagee shall immediately convey his interest

Power to redeem mortgages.

Section 108. in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct; or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct (a).

(a) Interest is payable under this section from the time when possession might have been taken if a good title could be shown. In the case of land subject to mortgage interest is payable by the vendor to the mortgagee in lieu of notice (*Spencer-Bell to L. & S. W. Rail. Co. (1885), 33 W. R. 771; 11 Digest 275, 2023*).

Deposit of mortgage money on refusal to accept.

109. If, in either of the cases aforesaid, upon such payment or tender any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the Bank, in the manner provided by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part; and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee, in satisfaction of his mortgage debt, so far as the same will extend; and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of such sum when refused on tender.

111. If upon such payment or tender as aforesaid being made any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in

the Bank, in the manner provided by this Act in like cases ; and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them ; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession ; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit. Section 111.

112. If a part only of any such mortgaged land be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other ; and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation ; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee (a) in satisfaction of his mortgage debt, so far as the same will extend ; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid ; and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee ; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed. Sum to be paid where part only of mortgaged lands taken.

(a) An arbitrator cannot determine that the money should be paid to any one other than the mortgagee (*Ex parte Strabane R. D. C. (No. 1)*, [1910] 1 I. R. 135 ; 11 Digest 275 j).

113. If upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the Bank, in the manner provided by this Act in the case of moneys required to be deposited in such Bank ; and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon ; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of Deposit of such sum when refused on tender.

Section 113. the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof, (as the case may be,) and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Powers of mortgagee for recovery of residue of mortgage debt.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs, in case of difference, to be taxed, and payment thereof enforced, in the manner herein provided with respect to the cost of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained (a).

(a) The promoters will be restrained by injunction from proceeding until the value of the mortgagee's interest has been ascertained and paid or secured (*Ranken v. East and West India Docks* (1849), 12 Beav. 298; 19 L. J. Ch. 153).

Rent-charges.

And with respect to lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Consideration to be paid for release of lands from rent-charges.

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation.

Release of part of land from charge.

116. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and

the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof. Section 116.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the Bank, in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment or incumbrance or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished. Deposit in case of refusal to release.

118. If any such lands be so released from any such charge or incumbrance or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts. Charge to continue on lands not taken.

And with respect to lands subject to leases, be it enacted as follows:

119. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not so required, and as against the lessee, the lessor Leases.
Where part only of lands under lease taken, the rent to be apportioned.

Section 119. shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease : and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease (a).

(a) An interest created by an owner after notice to treat is not a subject for compensation (*Re Marylebone Improvement Act* (1871), L. R. 12 Eq. 389; *Wilkins v. Birmingham Corporation* (1883), 25 Ch. D. 78; 48 J. P. 231), even if created in land adjoining the land purchased which may be injuriously affected (*Mercer v. Liverpool, St. Helens and South Lancashire Rail. Co.*, [1904] A. C. 461; 68 J. P. 533; 11 Digest 276, 2033); *Wilkins v. Birmingham Corporation* was considered in *L. C. C. v. Wilson's Executors*, [1916] 1 K. B. at p. 844; 80 J. P. at p. 255. See, however, *Cardiff Corporation v. Cook*, [1923] 2 Ch. 115; 87 J. P. 90; Digest Supp., the facts of which are set out at p. 4112, ante.

Agreement to an apportionment of rent under this section does not preclude the party from requiring the whole to be taken (*Lavers v. London C. C.* (1905), 69 J. P. 362; 93 L. T. 233).

If reversion to the whole has been acquired by the undertakers by private agreement before obtaining their Act they may exercise their compulsory powers afterwards against the tenant in respect of part only without the tenant being able to insist on his interest in the whole being taken (*Stevenson v. North British Rail. Co.* (1902), 4 F. (Ct. of Sess.) 244).

As to the date from which the apportioned rent becomes payable, see *Ball v. Graves* (1886), 18 L. R. Ir. 224. It runs from the date of the apportionment (*Re Secretary of State for War and Hurley's Contract*, [1904] 2 I. R. 354; 11 Digest 278, w).

Tenants to be compensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works.

Compensation to be made to tenants from year to year, etc.

121. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices (a), in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

(a) That is, if the land be taken (*R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1854), 4 E. & B. 88; 2 W. R. 591; 19 Digest 592, 224; *Knapp v. L. C. & D. Rail. Co.* (1863), 32 L. J. Ex. 236; 8 L. T. 541; 11 Digest 217, 1017); but if the lands are injuriously affected, the proceedings are under s. 68, ante, p. 4125 (*R. v. Sheriff of Middlesex* (1862), 31 L. J. Q. B. 261; and see *R. v. Stone* (1866), L. R. 1 Q. B. 529; 30 J. P. 488; 11 Digest 175, 539; *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 58 J. P. 832; 11 Digest 281, 2093). The complaint need not be made within six months under S. J. A., 1848, s. 11; 11 Halsbury's Statutes 278 (*R. v. Hanmay* (1877), 44 L. J. M. C. 27; 39 J. P. 534; *R. v. Edwards*, ante, p. 4114). The jurisdiction of the justices is limited to determining the amount of the compensation on the basis of the interest alleged by the tenant, and does not extend to inquiring whether that interest is his true interest; but in determining the compensation the justices have jurisdiction to inquire, and are bound to inquire, whether the claimant has been required to give up possession of the land before the expiration of his term or interest, that being a condition precedent to the right to compensation (*G. N. and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874; 66 J. P. 742).

Compensation for the residue of a lease which will expire in less than a year must be determined by justices under this section, and not by arbitration (*R. v. G. N. Rail. Co.* (1876), 2 Q. B. D. 151; 41 J. P. 197). It is otherwise with regard to the interest of a tenant having an agreement for a lease for years void at law, but equivalent to a lease in equity (*Sweetman v. Metropolitan Rail. Co.* (1864), 1 Hem. & M. 543; 22 J. P. 295; *Rogers v. Kingston-upon-Hull Dock Co.* (1865), 34 L. J. Ch. 165; 10 Jur. N. S. 1245; 32 Digest 259, 430; *In re King's Leasehold Estates* (1873), L. R. 16 Eq. 521; 30 Digest 344, 28). As to the right of a parent company to claim in respect of land occupied by a subsidiary company, see *Smith, Stone and Knight, Ltd. v. Birmingham Corporation*, [1939] 4 All E. R. 121; Digest Supp.

**Note to
Section 121.**

If a notice to treat be given, but nothing done thereunder, and the lands are afterwards taken under s. 85, then the interest of the tenant at the time when the lands are so taken is to be considered, and not his interest at the time when the notice to treat was given (*R. v. Kennedy*, [1893] 1 Q. B. 533; 57 J. P. 346). See *Bexley Heath Rail. Co. v. North, ante*, p. 4148.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power, and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Where greater interest claimed than from year to year, lease or grant to be produced.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed not after the expiration of three years from the passing of the special Act (a).

Limit of time for compulsory purchase.

(a) It is sufficient if notice to treat is given within the three years. See *Salisbury v. G. N. Rail. Co.* (1852), 17 Q. B. 840; 11 Digest 219, 1039. In computing the time, the date on which the special Act received the Royal Assent must be excluded, but the day on which the notice to treat is given must be included (*Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K. B. 1; 68 J. P. 41; 11 Digest 170, 478). The M. of H. do not ordinarily allow a longer period than three years in cases of compulsory purchase.

And with respect to interests in lands which have by mistake been omitted to the purchased, be it enacted as follows:

Interests omitted to be purchased.

124. If at any time after the promoters of the undertaking shall have entered (a) upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence (b) have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months (c) after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking

Purchase by promoters of the undertaking, after entry on lands, of interests the purchase whereof may have been omitted by mistake.

Mesne profits to be accounted for.

Section 124. thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act, the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

(a) The mere fact that the promoters have already taken possession of the property does not preclude them from their statutory right to give notice to treat (*Cooke v. London C. Co.*, [1911] 1 Ch. 604; 75 J. P. 309).

(b) As to what amounts to mistake or inadvertence within the meaning of this section, see *Martin v. L. C. & D. Rail. Co.* (1866), 1 Ch. App. 501; 11 Digest 274, 2019; *Stretton v. G. W. and Brentford Rail. Co.* (1870), 5 Ch. App. 751; 35 J. P. 183; 11 Digest 216, 1002; *Hyde v. Manchester Corporation* (1852), 16 Jur. 180; *Thomas v. Barry Dock and Rails. Co.* (1889), 5 T. L. R. 360; *Omagh U. D. C. v. Henderson*, [1907] 2 J. R. 310; 11 Digest 281, h. As to the effect of the section, see *Salisbury (Marquis) v. (t. N. Rail. Co.* (1858), 5 C. B. N. S. 174; 23 J. P. 22; 26 Digest 319, 518; *Jolly v. Wimbledon and Dorking Rail. Co.* (1861), 1 B. & S. 815; 26 J. P. 340; 11 Digest 282, 2106.

(c) The six months do not run from a judgment referring the matter to arbitration, but from the award in the arbitration (*Caledonian Railway v. Davidson*, [1903] A. C. 22; 11 Digest 282, 2104).

It has been held that the corresponding section of the Lands Clauses Consolidation (Scotland) Act, 1845, does not apply to cases in which the promoters do not, prior to the expiry of the period allowed for compulsory purchase, intend to acquire the omitted estate, right, interest or charge (*Davidson's Trustees v. Caledonian Rail. Co.* (1894), 21 R. (Ct. of Sess.) 1060).

How value of such interests and mesne profits shall be estimated.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

Promoters of the undertaking to pay the costs of litigation as to such interests.

126. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full (a) costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

(a) As between solicitor and client (*Hyde v. Manchester Corporation* (1862), 12 C. B. 475).

Sale of superfluous land.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows (a):

(a) As to what are superfluous lands, see *Betts v. G. E. Rail. Co.* (1879), 44 J. P. 281; 49 L. J. Ex. 197; 11 Digest 285, 2128; *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607; 44 J. P. 393; 11 Digest 283, 2110; *Hooper v. Bourne* (1879), 5 App. Cas. 1;

44 J. P. 327; 11 Digest 283, 2120; *L. & S. W. Rail. Co. v. Gomm* (1882), 20 Ch. D. 562; 11 Digest 286, 2141; *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418; 11 Digest 285, 2126; *Thackwray and Young's Contract* (1889), 40 Ch. D. 34; 40 Digest 151, 1204; *Ray v. Walker*, [1892] 2 Q. B. 88; 11 Digest 286, 2142; *Dunhill v. N. E. Rail. Co.*, [1896] 1 Ch. 121; 60 J. P. 228; 11 Digest 286, 2136; *Brown v. North British Railway* (1906), 8 F. (Ct. of Sess.) 534; 11 Digest 283, j; *In re L. & Y. Rail. Co. and Earl of Derby's Contract* (1908), 100 L. T. 44. The vesting of superfluous lands under s. 127 takes place by way of conditional limitation and not of forfeiture (*Miller v. Waterford Harbour Commissioners*, [1904] 2 I. R. 421; 18 Digest 238, k).

Note to
Section 126.

* * * * *

Ss. 127—132 are not incorporated into compulsory purchase orders made under the L. G. A., 1933, see *ante*, p. 1263, and are accordingly omitted.

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works; and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so, in accordance with the powers in that behalf given by the Acts for the redemption of the land tax (a).

Until completion of works promoters shall make good any deficiency of land tax and poor's rate caused by lands being taken.

Land tax may be redeemed.

(a) This section is to have effect as though references to the general rate were substituted for the poor rate and as though the amount required to be made good by the promoters were in the case of land situated in an urban rating area, one-half of the deficiency in the several assessments to the general rate. The assessment on which any payment made by the promoters under the section in the text is based is to be inserted in the valuation list and any such payment is to be taken into account for the purpose of ascertaining the proceeds of any rate (R. and V. Act, 1925, s. 2 (7), *ante*, p. 2123, and see *Railways (Valuation for Rating) Act, 1930*, s. 20, *ante*, p. 2328). But the promoters are not liable to be rated (*London Corporation v. St. Andrew, Holborn* (1867), L. R. 2 C. P. 574). As to this section, see *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81; 38 J. P. 484; 11 Digest 108, 48; *Stratton v. Metropolitan Board of Works* (1875), L. R. 10 C. P. 76; 39 J. P. 167. Where the works consisted in making new streets, it was held that the works were completed within the meaning of this section when the streets were fully made, and such of the lands taken as might be liable to assessment had become assessable, and that the deficiency was to be computed from time to time by comparing the assessed value at the time of the special Act of the lands taken with the assessed value at the time of computation of such of the lands taken as might have again become assessable (*Governor, etc. of Poor of City of Bristol v. Bristol Corporation* (1887), 18 Q. B. D. 549; 51 J. P. 676; 11 Digest 108, 50). In the county of London it includes only so much of the general rate as represents the poor rate (*Islington Borough Council v. London School Board*, [1903] 2 K. B. 354; 68 J. P. 35; 11 Digest 107, 42). Where a company purchased houses beyond the limits of deviation to obtain the withdrawal of opposition by the owners to the passing of the special Act, it was held that the deficiency in the poor rate in respect of the houses must be made good, and that it was immaterial that some of them were unoccupied (*Putney Overseers v. L. & S. W. Rail. Co.*, [1891] 1 Q. B. 440; 55 J. P. 422; 11 Digest 108, 57). For the construction of a similar clause in a local Act, see *Burrup v. L. & S. W. Rail. Co.* (1890), 64 L. T. 112; *St. Stephen Churchwardens v. Great Northern & City Rail. Co.* (1902), 66 J. P. 373; 86 L. T. 390; 11 Digest 110, 61. Where the promoters of an undertaking took land and pulled down the houses thereon and were called upon under this section to make good the deficiency in the rates caused by their works, it was held that they were liable to pay the rates according to the full rateable value of the houses and lands taken, notwithstanding the fact that the former owners of some of the houses had made agreements with the rating authority of the district under

**Note to
Section 133.**

s. 3 of the Poor Rate Assessment and Collection Act, 1869; 14 Halsbury's Statutes 546 (cf. s. 11 of the R. and V. Act, 1925, *ante*, p. 2142), to pay the rates instead of the occupiers subject to a deduction of 25 per cent., and that the promoters were not entitled to make a similar deduction (*St. Leonard, Shoreditch, Vestry v. London C. C.*, [1895] 2 Q. B. 104; 59 J. P. 423; 11 Digest 109, 52). It is doubtful whether the section has any application at all on a purchase of lands by agreement. See *Barony Parish Council v. Glasgow School Board* (1896), 23 R. (Ct. of Sess.) 221.

This section does not apply to lands acquired by a local authority under the Housing Act, 1936, or any enactment repealed by that Act (s. 146, *ibid.*, *ante*, p. 1744), and may be excluded from incorporation in compulsory purchase orders made under the L. G. A., 1933, if the M. of H. so determines (see *ante*, p. 1263).

Notices.

Service of
notices upon
promoters.

134. And be it enacted, that any summons or notice (a), or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

(a) For any purpose, and not only in an action (*In re South Yorkshire, etc. Rail. Co.* (1849), 18 L. J. Q. B. 333; 7 D. & L. 36). But see, as to the service of notices on local authorities, the L. G. A., 1933, s. 286, *ante*, pp. 1168—9.

Tender of
amends.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Payment into
court.

**Recovery of
penalties.**

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows (a):

(a) This part of the Act is printed as it is left unrepealed by the S. L. R. Acts, and by the S. J. A., 1884, which substitutes for the repealed sections the corresponding provisions of the S. J. Acts.

Penalties to be
summarily
recovered
before two
justices.

136. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices . . .

137. [Penalties to be levied by distress.]

Distress, how to
be levied.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of
penalties.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not

more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed to be applied in aid of the poor's rate of such parish, . . . (a). Section 139.

(a) See the Overseers Order, 1927, Art. 13, *ante*, p. 3599. The remainder of this section was repealed by the S. L. R. A., 1875.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress against the treasurer.

Notice to treasurer.

Reimbursement of treasurer.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Distress not unlawful for want of form, etc.

142. [*Penalties to be sued for within six months*] (a).

(a) Repealed by the S. L. R. A., 1892. See now the S. J. A., 1848, s. 11.

143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (a).

Penalty on witnesses making default.

(a) This section is repealed as to England so far as it relates to any matter to which the S. J. Acts apply (S. J. A., 1884).

144. [*Form of conviction*] (a).

(a) This section and Schedule (C.) containing the form of conviction were repealed by the S. L. R. A., 1892.

145. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts (a).

Proceedings not to be quashed for want of form, etc.

(a) See the notes to the corresponding section of the L. G. A., 1933, as to *certiorari*, s. 162, *ante*, p. 988. This section does not apply in cases where acts are done without jurisdiction. See *R. v. South Wales Rail. Co.* (1849), 13 Q. B. 988; 14 J. P. 6; *R. v.*

**Note to
Section 145.**

Edmundson (1851), 17 Q. B. 67; *R. v. L. & N. W. Rail. Co.* (1863), 12 W. R. 208; 11 Digest 205, 833. As to the time within which a *certiorari* will be granted, see *R. v. Stewart* (1880), 5 Q. B. D. 179. As to the setting aside a verdict on the ground that the jury were treated to a champagne luncheon, see *Tanner v. Swindon, etc., Rail. Co.* (1881), 45 L. T. 209.

Appeal.

Parties allowed
to appeal to
quarter sessions
on giving
security.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions . . . (a).

(a) The remainder of this section is repealed as to England by the S. J. A., 1884, s. 4.

Court to make
such order as
they think
reasonable.

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs both of the adjudication and of the appeal, as they may think reasonable.

Receiver of the
metropolitan
police district to
receive
penalties
incurred with-
in his district.

148. Provided always, that notwithstanding any thing herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

149. [False evidence] (a).

(a) Repealed by the Perjury Act, 1911.

Access to
special Act.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows (a) :—

(a) These sections, with respect to access to the special Act, were not incorporated by the P. H. A., 1875, s. 176, but are incorporated with the L. G. A., 1933.

Copies of
special Act to
be kept and
deposited, and
allowed to be
inspected.

150. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal or other like undertaking,

the works of which shall not be confined to one town or place, shall also Section 150.
 within the space of such six months deposit in the office of each of the [clerks
 of the county council] of the several counties into which the works shall extend
 a copy of such special Act, so printed as aforesaid; and the said [clerks of the
 county council] shall receive, and they and the company respectively shall
 retain, the said copies of the special Act, and shall permit all persons interested
 to inspect the same, and make extracts or copies therefrom, in the like manner
 and upon the like terms and under the like penalty for default as is provided
 in the case of certain plans and sections by an Act passed in the first year of
 the reign of her present Majesty intituled "An Act to compel Clerks of the 7 Will. 4 &
 Peace for counties and other Persons to take the custody of such Documents 1 Vict. c. 83.
 as shall be directed to be deposited with them under the Standing Orders of
 either House of Parliament."

See Parliamentary Documents Deposit Act, 1837; 12 Halsbury's Statutes 472.

The substitution in square brackets was made by the L. G. A., 1933, s. 101, *ante*, p. 867.

151. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds Penalty on
company fail-
ing to keep or
deposit copies.
 for every such offence, and also five pounds for every day afterwards during
 which such copy shall not be so kept or deposited.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.).

FORM OF CONVEYANCE (a).

I , of , in consideration of the sum of paid to me [or, as the
case may be, into the Bank of England [or Bank of Ireland] in the name and with the
 privy of the Accountant-General of the Court of Chancery, ex parte "the promoters
 of the undertaking [naming them], or to A.B., of , and C.D., of , two
 trustees appointed to receive the same], pursuant to the [here name the special Act],
 by the [here name the company or other promoters of the undertaking], incorporated
 [or constituted] by the said Act, do hereby convey to the said company [or other
 description], their successors and assigns, all [describing the premises to be conveyed]
 together with all ways, rights, and appurtenances thereto belonging, and all such
 estate, right, title, and interest in and to the same as I am or shall become seised or
 possessed of, or am by the said Act empowered to convey, to hold the premises to the
 said company [or other description], their successors and assigns, for ever, according
 to the true intent and meaning of the said Act.

In witness whereof I have hereunto set my hand and seal, the day of
 in the year of our Lord .

(a) As to the use of the Forms in this and the next Schedule, see s. 81, *ante*, p. 4134.

SCHEDULE (B.).

FORM OF CONVEYANCE ON CHIEF RENT.

I , of , in consideration of the rentcharge to be paid to me, my heirs
 and assigns, as hereinafter mentioned, by "the promoters of the undertaking"
 [naming them], incorporated [or constituted] by virtue of the [here name the special
 Act], do hereby convey to the said company [or other description], their successors
 and assigns, all [describing the premises to be conveyed], together with all ways, rights,
 and appurtenances thereunto belonging, and all my estate, right, title, and interest
 in and to the same and every part thereof, to hold the said premises to the said com-
 pany [or other description], their successors and assigns, for ever, according to the
 true intent and meaning of the said Act, they the said company [or other description],
 their successors and assigns, yielding and paying unto me, my heirs and assigns,
 one clear yearly rent of by equal quarterly [or half-yearly, as agreed upon],
 portions, henceforth, on the [stating the days], clear of all taxes and deductions.

In witness whereof I haveunto set my hand and seal, the day of , in
 the year of our Lord

THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

(8 & 9 VICT. c. 20) (a).

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of Railways. [8th May, 1845.]

* * * * *

*Working of
mines.*

And with respect to mines lying under or near the railway, be it enacted as follows (a) :—

(a) These sections were not incorporated with the P. H. A., 1875, but are incorporated in orders made under the L. G. A., 1933, by *ibid.*, Sched. VI., 2, *ante*, p. 1263.

*Company not
to be entitled
to minerals.*

77. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased (a) ; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Ss. 77—85 of this Act are a code as to the rights of a company to mines and minerals, but they do not get rid of the ordinary law on the subject ; by inference they affirm the continuing application of the ordinary common law right of support but, in certain events, supersede it (*L. & N. W. Rail. Co. v. Howley Park Coal and Cannel Co.*, [1911] 2 Ch. 97, *per* BUCKLER, L.J., at pp. 126, 129 ; *affd.*, [1913] A. C. 11 ; 11 Digest 153, 353). They do not take away the power of the company to purchase the minerals under s. 6 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4107, but are for the benefit not of the mine owner but of the company and only exempt the company from the obligation of buying the minerals at once together with the surface (*Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559 ; 11 Digest 107, 39). As to what are mines and minerals within the section, see *Glasgow Corporation v. Farie*, *post*, p. 4180 ; *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, *post*, p. 4180 ; *Hext v. Gill*, *post*, p. 4179 ; *Great Western Rail. Co. v. Blades*, *post*, p. 4180 ; *Re Todd, Birleston & Co. and N. E. Rail. Co.*, *post*, p. 4180 ; *Midland Rail. Co. and Kettering, Thrapston and Huntingdon Rail. Co. v. Robinson*, *post*, p. 4180 ; *Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552 ; 34 Digest 603, 3 ; *Ruabon Brick Co. v. Great Western Rail. Co.*, *post*, p. 4182 ; *Great Western Rail. Co. v. Carpalla Clay Co.*, *post*, p. 4179. This section applies whether the minerals are got by underground or surface workings (*Midland Rail. Co., Ltd. v. Haunchwood Brick and Tile Co.*, *supra*).

(a) These words are not confined to purchases by agreement (*Errington v. Metropolitan District Rail. Co.*, *supra*).

*Mines lying
near the rail-
way not to be
worked if the
company are
willing to make
compensation
for them.*

78. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do, thirty days before the commencement of working (a) ; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose ; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make compensation (b) for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same ; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation (c).

By the Mines (Working Facilities and Support) Act, 1923, s. 15, Schedules I—III ; 14 Halsbury's Statutes 389—398, certain sections are substituted for ss. 78—85 of this Act where it is incorporated in any Act, order or other instrument relating to a railway company.

passed or made after 18th July, 1923. The L. G. A., 1933, was passed after that date but does not relate to a railway company, and consequently it is the original and not the substituted sections which are incorporated by *ibid.*, Sched. VI., *ante*, p. 1263.

Note to
Section 78.

The question of how far a railway company acquires a right of support for the strata purchased from the strata not purchased has been discussed in a number of cases. The section *simpliciter* only applies to mines within forty yards of a railway and does not apply to mines outside that limit, though of course the acquiring authority may acquire by voluntary agreement more than it could acquire compulsorily. The general position appears to be as follows:—(1) If the company purchase the minerals within the 40 yards, they have the ordinary common law right of lateral support for their railway from mines beyond the 40 yards; (2) if they do not purchase the minerals within the 40 yards, the section deprives them of any common law right of support from such minerals; (3) if they purchase a stratum of minerals lying under the railway in lieu of paying compensation, they acquire no additional right of support from strata subjacent or adjacent to that purchased; (4) the section is not confined to compulsory purchase, but extends also to lands acquired voluntarily beyond the limits of the compulsory powers (*L. & N. W. Rail. Co. v. Houley Park Coal and Cannel Co.*, [1911] 2 Ch. 97, *affd.*, [1913] A. C. 11; 11 Digest 153, 353; *Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27; 11 Digest 152, 349; *Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, *post*, p. 4182).

(a) It is not necessary, for a notice to be given under this section, that the owner should intend to work the minerals himself, but there must be a real and bonâ fide desire to work either by himself or by his lessees or licensees (*Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; 11 Digest 150, 328).

(b) The company indicate willingness to make compensation by giving a counter notice. In *Smith v. Great Western Rail. Cos.* (1877), 3 App. Cas. 165, at p. 182; 42 J. P. 404; 11 Digest 156, 363, it was suggested that the counter notice must be given within thirty days, but this remark must be considered *obiter* (*Dixon, Ltd. v. Caledonian and Glasgow and South Western Rail. Co.* (1880), 5 App. Cas. 820; 11 Digest 155, 366), and the notice may be given at any time (*ibid.*).

(c) Compensation under this section is assessed under the Lands Clauses Acts (*Smith v. Great Western Rail. Co.*, *supra*; *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 58 J. P. 719); *cf.* s. 81, *post*, p. 4158, and notes thereto. For measure of compensation, see *Eden v. North Eastern Rail. Co.*, [1907] A. C. 400; 71 J. P. 450; 11 Digest 157, 374; *Rugby Portland Cement Co. v. London and North Western Rail. Co.*, [1908] 2 K. B. 606; 72 J. P. 245; 11 Digest 162, 411.

79. If before the expiration of such thirty days (a) the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate (b); and if any damage or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts.

If company are not willing to make compensation, owner may work the mines—
Damage or obstruction to railway caused by improper working to be made good.

See first note to s. 78, *ante*, p. 4156.

(a) See note (b) to s. 78, *ante*, and note that the fact that the 30 days has expired does not prevent the company from giving counter notice subsequently.

(b) The owner may work the minerals by open workings if such is the usual manner of working the mines in the district in which they are situate (*Midland Rail. Co. v. Robinson*, *post*, p. 4180). This is so even though, in so doing, he destroys the railway (*Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, *post*, p. 4182). But the company cannot thereafter be compelled to restore the railway (*R. v. Great Western Rail. Co.* (1893), 58 J. P. 74; 62 L. J. Q. B. 572; 38 Digest 258, 34).

Section 80.

Mining communications between mines lying on both sides of railway.

80. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

See first note to s. 78, *ante*, p. 4156.

The owner may not pass over the railway, but is entitled to compensation under s. 81, *infra*, for the additional expense he will have to incur in tunnelling under it (*Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632; 19 Digest 100, 628).

Company to make compensation for injury done to mines.

81. The company shall from time to time pay to the owner, lessee, or occupier or any such mines extending so as to lie on both sides of the railway all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of the making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expenses, the same shall be settled by arbitration.

See first note to s. 78, *ante*, p. 4156.

In the case of this section, the provisions of the Lands Clauses Acts do not apply (*R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 58 J. P. 719); *cf.* notes to s. 78, *ante*, p. 4156.

Company to make compensation also to owner, etc., of surface for damage caused by any airway or other work made necessary by the railway.

82. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines) by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

See first note to s. 78, *ante*, p. 4156.

Power to company to enter and inspect the working of mines.

83. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier or such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

See first note to s. 78, *ante*, p. 4156.

84. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

Section 84.

Penalty for refusal to allow inspection.

See first note to s. 78, *ante*, p. 4156.

85. If it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expense thereof from such owner, lessee, or occupier, by action in any of the superior courts.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

See first note to s. 78, *ante*, p. 4156.

* * * * *

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows (b):

Recovery of damages and penalties.

(a) The following sections of this Act are here set out as being incorporated with the Gasworks Clauses Act, 1847, s. 40, *post*, p. 4175, and the Waterworks Clauses Act, 1847, s. 85.

(b) This part of the Act is printed as it is left unrepealed by the S. J. A., 1884, which substitutes for the repealed sections the corresponding provisions of the S. J. Acts. Most of the same sections are again repealed by the S. L. R. A., 1892.

140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for (a), such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice on application, shall issue their or his warrant accordingly (b).

Provision for ascertainment of damages not otherwise provided for.

Enforcement by distress.

(a) See *Harpur v. Swansea Corporation*, [1913] A. C. 597; 77 J. P. 381; 43 Digest 1097, 272.

(b) These damages, costs, and expenses are now apparently civil debts within the S. J. A., 1879, ss. 6, 35, as being sums recoverable on complaint to a court of summary jurisdiction.

141. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Distress against the treasurer.

Notice to treasurer.

Reimbursement of treasurer.

Section 142.

Method of proceeding before justices in questions of damages, etc.

142. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Publication of penalties.

143. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any byelaw of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

144. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any byelaw or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

145. Every penalty or forfeiture imposed by this or the special Act, or by any byelaw made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings (a) before two justices (b).

(a) See *Metropolitan Water Board v. Bunn*, [1913] 3 K. B. 181; 77 J. P. 353; 38 Digest 119, 860.

(b) The remainder of this section and the whole of the two following sections are repealed by the S. J. A., 1884, s. 4, and Schedule, and again by the S. L. R. A., 1892.

146. [*Penalties to be levied by distress.*]

147. [*Imprisonment in default of distress.*]

Distress how to be levied.

148. Where in this or the special Act, or any Act incorporated therewith any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of term, etc.

149. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form

in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser ab initio on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case. **Section 149.**

150. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, . . . (a). Application of penalties.

(a) The remainder of this section relating to extra-parochial places is repealed as obsolete by the S. L. R. A., 1875. Overseers having been abolished by s. 62, R. and V. Act, 1925, see now as to the application of these penalties the Overseers Order, 1927 (S. R. & O., 1927, No. 55), Art. 13 (1) (b), *ante*, p. 3599.

151. [*Penalties to be sued for within six months*] (a).

(a) This section is repealed by the S. J. A., 1884, s. 4, and Schedule, and again by the S. L. R. A., 1892. See now the S. J. A., 1848, s. 11.

152. If, through any act, neglect, or default, on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly. Damage to be made good in addition to penalty.

153. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (a). Penalty on witnesses making default.

(a) This section is repealed so far as relates to any matter to which the S. J. Acts apply (47 & 48 Vict. c. 43).

154. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him with all convenient despatch before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender. Transient offenders.

155. [*Form of conviction*] (a).

(a) This section is repealed by the S. J. A., 1884, s. 4, and Schedule, and again by the S. L. R. A., 1892.

Section 156. **156.** No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts (a).

Proceedings not to be quashed for want of form. etc.

(a) See the notes to s. 162 (2) of the L. G. A., 1933, *ante*, p. 988.

Appeal.

Parties allowed to appeal to quarter sessions, on giving security.

157. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions . . . (a).

(a) The remainder of this section is repealed as to England by the S. J. A., 1884, s. 4, and Schedule. See now s. 6 of that Act, and the S. J. A., 1879, s. 31.

Court to make such order as they think reasonable.

158. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

159. Provided always, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

160. [*False evidence*] (a).

(a) Repealed by the Perjury Act, 1911.

THE GASWORKS CLAUSES ACT, 1847.

Section 1.

(10 & 11 Vict. c. 15) (a).

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Gasworks for supplying Towns with Gas.

[23rd April, 1847.]

[1.] This Act shall extend only to such gasworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act (b).

Incorporation with special Act.

(a) The P. H. A., 1875, s. 161, *post*, enabled an urban authority to obtain a Provisional Order authorising a gas undertaking under the Gas and Water Works Facilities Act, 1870, and any Act amending the same (36 & 37 Vict. c. 89). These Acts, which are set out, *post*, pp. 4264, 4328, incorporate this Act, and in consequence the amending Act of 1871, *post*, p. 4307, both of which are, therefore, included in this work. Reference should, however, be made to the Gas Regulation Act, 1920, Vol. V., *post*, which contains important provisions relating to the manufacturing and sale of gas, the charges made for gas supplied, the testing of gas, etc., and the Gas Undertakings Act, 1929, Vol. V., *post*. A Provisional Order is now replaced by a "special" order and the Board of Trade have replaced the G. B. as the central authority.

As to the powers of gas undertakers in relation to residuals, see *Deuchar v. Gas Light and Coke Co.*, [1925] A. C. 691; 89 J. P. 177; 25 Digest 471, 10; and s. 4 of the Gas Undertakings Act, 1929, Vol. V., *post*.

(b) As to the limits of supply, see *Gas Light and Coke Co. v. South Metropolitan Gas Co.* (1889), 54 J. P. 373; 62 L. T. 126; 25 Digest 491, 114. A water company was authorised to give a supply of water within certain specified parishes, and extended its water main to the boundary of the district within which it was authorised to supply water, and from thence continued it at the cost of the consumer to a place beyond its district. When they erected a hydrant and meter from which pipes were laid to the consumer's house. It was held that a "supply" of water covered the delivery of water for use at the terminals, wherever they might be, at which a consumer took possession of the water and devoted it to his own use, and that the company was not entitled to give such supply and must be restrained by injunction (*Att.-Gen. v. West Gloucestershire Water Co.*, [1909] Ch. 338; 73 J. P. 453; 28 Digest 460, 150). Gas undertakers may obtain an order from the Board of Trade to supply premises outside their limits of supply under s. 5, Gas Undertakings Act, 1929, Vol. V., *post*.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

"Interpretation."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of gasworks, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof: and the expression "the undertaking" shall mean the gasworks, and the works connected therewith, by the special Act authorised to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the gasworks.

"The special Act."

"Prescribed."

"The lands."

"The undertaking."

"The undertakers."

Section 3. 3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number.	Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number :
Gender.	Words importing the masculine gender shall include females :
" Person."	The word " person " shall include corporation, whether aggregate or sole :
" Lands."	The word " lands " shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure :
" Street."	The word " street " shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place, within the limits of the special Act (a) :
" The gas-works."	The expression " the gasworks " shall mean the gasworks, and the works connected therewith, by the special Act authorised to be constructed (b) :
" Gas rate."	The expression " gas rate " shall include any rent, reward, or payment to be made to the undertakers for a supply of gas :
" Month."	The word " month " shall mean calendar month :
" Superior courts."	The expression " superior courts," where the matter submitted to the cognizance of the superior courts arises in England . . . shall mean Her Majesty's superior courts of record at Westminster . . . (c).
" Oath."	The word " oath " shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :
" County."	The word " county " shall include riding or other division of a county having a separate commission of the peace . . . (c) and it shall also include county of a city or county of a town :
" Justice."	The word " justice " shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorised or required to be done by two justices, the expression " two justices " shall be understood to mean two or more justices met and acting together (c) :
" Two justices."	
" Quarter sessions."	The expression " quarter sessions " shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof, for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace.

(a) This definition was held not to include an open tract of land above mean high water-mark, which belonged to the owner of enclosed land fronting the shore. It appeared that the inhabitants of two villages on the shore had always gone to and fro between them along the shore, and at high water passed over this land as they chose, but by no defined track (*Maddock v. Wallasey L. B.* (1886), 50 J. P. 404; 55 L. J. Q. B. 267; 25 Digest 472, 15).

(b) The expression " gasworks and plant " in s. 46 of the Hamilton Gas Works Act, 1895, was held to include not only the works themselves in the material sense, but the undertaking as a going concern (*Hamilton Gas Co. v. Hamilton Corporation*, [1910] A. C. 300; 74 J. P. 185; 25 Digest 493, b; *Perth Gas Co. v. Perth Corporation*, [1911] A. C. 506; 27 T. L. R. 526; 25 Digest 493, a).

(c) Words relating to Scotland and Ireland only are here omitted.

Citing the Act. And with respect to citing this Act, or any part thereof, be it enacted as follows:

4. In citing this Act in other Acts of Parliament, and in legal instruments, **Section 4.** it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

Short title of this Act.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act; and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Incorporation of parts of this Act with other Acts.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (a): *Laying of pipes.*

6. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels (b) within or under such streets and bridges, and lay down and place within the same limits, pipes, conduits, service pipes, and other works (c), and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be (d) in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers (e).

Power to break up streets, etc. under superintendence, and to open drains, and to lay pipes, make sewers, erect lamps, etc.

(a) See on this subject the cases cited in the notes to the P. H. A., 1875, s. 149, *post*. See also s. 80 of the P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1152, and notes thereto. As to the liability of the company for an accident caused while breaking up a pavement, see *Hornby v. Liverpool United Gas Light Co.* (1883), 47 J. P. 231; 25 Digest 483, 80. As to what is a street, see *Maddock v. Wallasey L. B.*, *ante*, p. 4164.

(b) A tunnel, with brick sides and a roof of girders set in concrete, which is constructed by the owner of the soil on either side of a public highway, is not a tunnel within the meaning of the section with which the undertakers may interfere (*Schweder v. Worthing Gas Light and Coke Co.* (No. 1), [1912] 1 Ch. 83; 76 J. P. 3; 25 Digest 473, 23).

(c) A corporation, empowered to supply gas within a township, of which the local board, as undertakers within the meaning of this section, had the exclusive right of laying gas mains therein and was compelled to repair them and to allow the corporation to use them, was held to have a mere easement in the mains and not liable to be rated in respect of them (*Southport Corporation v. Ormskirk Assessment Committee*, [1894] 1 Q. B. 196; 58 J. P. 212; 19 Digest 17, 47). As to the meaning, in a local Act, of the term "mains," see *Whittington Gas Light and Coke Co. v. Chesterfield Gas and Water Board*, [1914] 2 Ch. 146; 78 J. P. 379; 25 Digest 471, 13.

(d) As to this phrase, see *R. v. East and West India Docks, etc. Rail. Co.* (1853), 2 E. & B. 466; 17 J. P. 807; 38 Digest 267, 92.

(e) As to the assessment of compensation, see 64 J. P. 291.

7. Provided always, that nothing herein shall authorise or empower the undertakers to lay down or place any pipe or other works into, through, or against any building (a), or in any land, not dedicated to public use (b), without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in

Undertakers not to enter on private land without consent.

Section 7. the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down (c).

(a) Arches in a roadway occupied as cellars are buildings (*Thompson v. Sunderland Gas Co.* (1877), 2 Ex. D. 429; 42 J. P. 198; 25 Digest 473, 21). So is a brick tunnel with a roof constructed of girders set in concrete (*Schweder v. Worthing Gas Light and Coke Co.* (No. 1), [1912] 1 Ch. 83; 76 J. P. 3; 25 Digest 473, 23, following *Caledonian Rail. Co. v. Glasgow Corporation* (1901), 3 F. (Ct. of Sess.) 526).

(b) The dedication of a road to public use brings it within s. 6 (*supra*), and no part of it can for the purposes of gas or water undertakings be properly held to be land "not dedicated to public use" under this section. Dedication as between the owner of the soil on the one hand and the controlling authority on the other, involves not merely the occupation by the public of the surface, but also the dedication of so much of the subjacent soil as is necessary for the proper maintenance of the surface as a road or street (*Schweder v. Worthing Gas Light and Coke Co.* (No. 2), [1913] 1 Ch. 118; 77 J. P. 41; 25 Digest 472, 16). As to breaking up occupation roads not dedicated to the public, see *Selby v. Crystal Palace District Gas Co.* (1862), 30 Beav. 606; 31 L. J. Ch. 592; 25 Digest 472, 19. Power is now given to local authority undertakers upon application by the owner or occupier of premises abutting on a street to lay gas and water pipes in streets laid out but not dedicated (P. H. A., 1926, s. 80, Vol. V., *post*; P. H. A., 1936, s. 119, *ante*, p. 367). As to what constitutes such a street, see *Davies v. Ripon Corporation*, [1928] Ch. 884; 92 J. P. 163; 43 Digest 1062, 36.

(c) This section does not preclude the undertakers from taking a pipe through a railway bridge under s. 6 without cutting into the structure of the bridge but laying the pipe in the soil (*Taff Vale Rail. Co. v. Cardiff Gas Light and Coke Co.* (1907), 71 J. P. 350; 23 T. L. R. 528; 25 Digest 472, 17).

In view of this section the undertakers are not liable to penalties under s. 36 of the Gasworks Clauses Act, 1871, *post*, p. 4316, for neglect or refusal to supply gas to a lamp in a private passage where the owner objects to their laying the pipe (*Bellamy v. Liverpool United Gas Light Co.* (1904), 68 J. P. 540; 2 L. G. R. 1182; 25 Digest 472, 20).

8. Before the undertakers proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons (a) under whose control or management the same may be, or to their clerk, surveyor, or other officer notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen (b).

(a) A rural district council as "highway authority" under s. 25, L. G. A., 1894, was held not to be, and a county council in respect of a rural district is therefore not a "person under whose control or management" a highway, dedicated to the public, but not repairable by the inhabitants at large, is within the meaning of this section (*Redhill Gas Co. v. Reigate R. D. C.*, [1911] 2 K. B. 565; 75 J. P. 358; 25 Digest 473, 24). Within the area of an urban district council there were three streets or roads which were open for public use, but which were not repairable by the inhabitants at large. The Post Office authorities were desirous of placing telegraph wires along these streets, and applied to the district council for their consent, but the council refused to give consent on the ground that the streets were not under their control within the meaning of s. 13 of the Telegraph Act, 1863. It was held that the council "had not the control over the roads" and were not therefore entitled to give consent (*Postmaster-General v. Hendon U. D. C.*, [1914] 1 K. B. 564; 78 J. P. 145; 42 Digest 888, 19). See also *Postmaster-General v. Huichings*, [1916] 1 K. B. 774; 80 J. P. 246; 42 Digest 892, 38.

(b) Consent is not necessary (*Dover Gaslight Co. v. Dover Corporation* (1855), 7 De G. M. & G. 545; 19 J. P. 615; 25 Digest 471, 12). As to what notice must be given, see *Edgware Highway Board v. Colne Valley Water Co.* (1877), 46 L. J. Ch. 889; 43 Digest 1072, 97. As to the right of support of pipes laid in a highway, see *Normanton Gas Co. v. Pope* (1883), 52 L. J. Q. B. 629; 49 L. T. 798; 25 Digest 474, 27.

9. No such street, bridge, sewer, drain, or tunnel shall except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such

Notice to be served on persons having control, etc., before breaking up streets or opening drains.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

Section 9.

ustices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertakers' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer (a).

(a) See *Edgware Highway Board v. Colne Valley Water Co.* (1877), 46 L. J. Ch. 889; 43 Digest 1072, 97; *East Molesey L. B. v. Lambeth Waterworks Co.*, [1892] 3 Ch. 289; 43 Digest 1072, 96; and note (a) to s. 12 at p. 4168, *post*.

Where a local authority in the metropolis employ a contractor to reinstate streets broken up by a company under statutory powers, they cannot recover from the company under s. 114 of the Metropolis Management Act, 1855, any sum in addition to the amount actually paid to the contractor, in respect of supervision exercised by their officers over the work, if in fact no expense has been incurred for supervision beyond that which would have been incurred if the company had executed the work of reinstatement (*Metropolitan Water Board v. Westminster City Council* (1905), 70 J. P. 52; 75 L. J. K. B. 384; 43 Digest 1097, 271).

A metropolitan borough council purporting to act under the Metropolis Management Act, 1855, s. 114, passed a resolution that they would in all cases where any pavement was opened by a gas company do the work of reinstatement themselves. Subsequently a gas company having opened the pavement of a street and finished laying their pipes, gave notice to the council that reinstatement was necessary. It was held that the resolution did not, upon the mere expiry of a reasonable time after receipt of the notice, *ipso facto* release the company from the duty imposed by the above section. To effect such release it was necessary that the council should dismiss the company from the control of the reinstatement, and in fact take charge of the work themselves (*Brame v. Commercial Gas Co.*, [1914] 3 K. B. 1181; 79 J. P. 55; 25 Digest 491, 117).

10. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement, where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Streets, etc. broken up to be reinstated without delay.

Roads, etc. to be fenced and lighted while opened;

and to be kept in repair for a certain time afterwards.

11. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the undertakers are hereby authorised to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where

Penalty for delay in reinstating streets, etc.

Section 11. such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof (a).

(a) Notwithstanding this section the undertakers may be liable in damages to a person injured in consequence of careless or defective filling in of the ground (*Goodson v. Sunbury Gas Co.* (1896), 60 J. P. 585; 75 L. T. 251; 25 Digest 483, 77). In the metropolis the local authority may claim to reinstate the street under s. 114 of the Metropolis Management Act, 1855, instead of permitting a gas company to do it, and in that case the gas company are not liable if it is done negligently (*Cressy v. South Metropolitan Gas Co.* (1906), 70 J. P. 405; 94 L. T. 790; 25 Digest 483, 78). This case was distinguished in *Brame v. Commercial Gas Co.*, cited in the note to s. 9, *supra*. Recovery of expenses of reinstatement from the gas company in such cases is provided for by s. 82 of the Metropolis Management Amendment Act, 1862. See *Commercial Gas Co. v. Poplar Borough Council* (1906), 70 J. P. 178; 94 L. T. 222; 25 Digest 473, 25.

In case of delay, persons having control of streets, etc. may reinstate them.

12. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense (a) of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

(a) This includes a reasonable charge for the supervision of the work (*New River Co. v. Westminster Corporation* (1904), 68 J. P. 358).

Supply of gas.

And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows (a):

(a) It should be mentioned here that important alterations in the mode of charging for gas supplied are introduced by the Gas Regulation Act, 1920, Vol. V., *post*, and the Gas Undertakings Act, 1929, s. 6, Vol. V., *post*.

Power of the undertakers to contract for lighting buildings, streets, etc.

13. The undertakers may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof; and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such commissioners, trustees, or persons with lamps, lamp-posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, or other persons (a).

(a) See the P. H. A., 1875, s. 161. Sections 14 and 15 of this Act are repealed by the S. L. R. A., 1875, except in so far as incorporated with the special Acts to which the Gasworks Clauses Act, 1871, *post*, p. 4307, does not apply. Section 14 related to the exemption of gas fittings from distress, as to which, see *Gaslight and Coke Co. v. Hardy* (1886), 17 Q. B. D. 619; 51 J. P. 6; 18 Digest 308, 438.

* * * * *

If rent is not paid, gas may be cut off and rent and expenses recovered.

16. If any person supplied with gas by virtue of this or the special Act, neglect to pay the rent due for the same to the undertakers, the undertakers may stop the gas from entering the premises of such person, by cutting off the service-pipe, or by such means as the undertakers shall think fit (a).

(a) The remainder of this section was repealed by the S. L. R. A., 1875, as also was s. 17, except in so far as incorporated with special Acts to which the Gasworks Clauses Act, 1871, *post*, p. 4307, does not apply. The liability under this section attaches to the person, not to the premises, and the undertakers may cut off the gas supplied to one set of premises of a customer for default made by him in respect of another set of premises (*Montreal Gas Co. v. Cadieux*, [1899] A. C. 589; 25 Digest 478, b).

The payment due to a gas company for gas supplied, though called a rent, is not really a rent, and consequently a gas company does not come within the words "or other person to whom any rent is due" in s. 34 of the Bankruptcy Act, 1869 (now s. 35 (1) of the Bankruptcy Act, 1914 (*Ex parte Harrison, Re Peake* (1884), 13 Q. B. D. 753; 5 Digest 958, 7853).

An incoming tenant is not liable for arrears due from an outgoing tenant under the Gaslight and Coke Company's special Act (*Cannon Brewery Co. v. Gas Light and Coke Co.*, [1904] A. C. 331; 68 J. P. 461; 25 Digest 476, 37). But where a woman took and paid for gas supplied to her house and afterwards married, it was held that she continued liable for gas supplied after her marriage until she discontinued the supply or gave the gas company notice of her marriage (*Lea Bridge District Gas Co. v. Malvern*, [1917] 1 K. B. 803; 81 J. P. 141; 25 Digest 477, 43).

* * * * *

And with respect to waste or misuse of the gas, or injury to the pipes and other works, be it enacted as follows:

**Note to
Section 16.**

*Undue use of
gas.*

18. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas (a), or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pounds for every such offence, and also the sum of forty shillings for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the undertakers may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into (b).

Penalty for
fraudulently
using the gas
of the
undertakers.

(a) *I.e.*, in respect of gas ascertained otherwise than by meter (*Falkirk Corporation v. Russell*, [1911] S. C. (J.) 99; 25 Digest 475, h).

(b) As to larceny of gas, see *R. v. White* (1853), 3 Car. & Kir. 363; 17 J. P. 391; 15 Digest 883, 9686; *R. v. Foster* (1865), L. R. 1 C. C. R. 172. As to the operation of the Statute of Limitations, when there has been a fraudulent concealment of an improper using of gas within this section, see *Imperial Gas Light and Coke Co. v. London Gas Light Co.* (1854), 10 Exch. 39; 32 Digest 526, 1815. The appellants, on their own premises, substituted for part of a gas pipe belonging to the respondents a larger pipe, in order to increase their supply, without having first obtained the respondents' consent, though notice under the Gasworks Clauses Act, 1871, s. 15, *post*, p. 4311, to disconnect the pipe from the meter was duly given. There was no proof of any fraud, or misuse of the gas. It was held that the appellants had committed an offence under the above section (*Wood v. West Ham Gas Co.* (1885), 49 J. P. 662; 52 L. T. 817; 25 Digest 479, 55).

19. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

Penalty for
wilfully
removing or
damaging pipes,
etc.

20. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the

Satisfaction for
accidentally
damaging pipes,
etc.

Section 20. undertakers for the damage done, not exceeding five pounds, as any two justices or the sheriff shall think reasonable (a).

(a) Under this section a person may be made responsible although the lamp is placed by the local authority in an unsafe or improper position and is broken by such person without any negligence on his part (*Burgess v. Morris* (1897), 61 J. P. 553; 25 Digest 480, 59). But a master is not liable for damages to a lamp caused accidentally by his servant (*Harding v. Barker* (1888), 53 J. P. 308; 37 W. R. 78; 25 Digest 480, 58). He is liable to an action at common law for damages caused by the negligence of his servant (*Crystal Palace Gas Co. v. Idris & Co.* (1900), 64 J. P. 452; 25 Digest 480, 61). If the summons charge damage as done unlawfully and carelessly it need not say "carelessly or accidentally," and a conviction will be good if there be evidence of carelessness, though short of what might be called negligence (*Ashton v. Eccles Corporation* (1906), 71 J. P. 55; 25 Digest 480, 60). See also *Gibbons v. Vanguard Motor Bus Co.* (1908), 72 J. P. 505; 25 T. L. R. 13; 36 Digest 60, 381; *Barnes U. D. C. v. London General Omnibus Co.* (1909), 73 J. P. 68; 100 L. T. 115; 36 Digest 60, 382; *Isaac Walton & Co. v. Vanguard Motor Bus Co.* (1908), 72 J. P. 505; 25 T. L. R. 13; 36 Digest 60, 381. Where the damage was caused by a van being blown over by an exceptional gale, it was held that the driver of the van was not liable under the corresponding section of a Scots local Act (*Hogg v. Macpherson*, [1928] S. L. T. 35; Digest Supp.). See also *per SCRUTTON*, and *ATKIN*, L.JJ., in *P. M. G. v. Beck and Pollitzer*, [1924] 2 K. B. 308; 88 J. P. 137; 43 Digest 895, 61.

The words of the section "in satisfaction" mean "in full satisfaction." Therefore where the Justices have awarded a sum under the section, the undertakers cannot recover a further sum in an action for negligence (*Birmingham Corporation v. Allsopp* (1918), 88 L. J. K. B. 549; 25 Digest 431, 65).

Nuisance from gas. And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows (a):

(a) See also the provisions of the P. H. A., 1875, s. 68, *post*, and the notes thereon; the Waterworks Clauses Act, 1847, ss. 61—67, *post*, pp. 4193 *et seq.*; and the Rivers Pollution Prevention Act, 1876, *post*. As to the liability of a gas company for damage caused by an escape of gas, see *Jones v. Carshalton Gas Co.* (1888), 5 T. L. R. 69; *Burrows v. March Gas and Coke Co.* (1872), L. R. 7 Ex. 96; 36 J. P. 517; 25 Digest 484, 83, and by the discharge of noxious waste products into a trout river, see *Granby (Marquis of) v. Bakewell U. D. C.* (1923), 87 J. P. 105; 21 L. G. R. 329; 36 Digest 221, 630.

Penalty on undertakers allowing washings, etc. produced in making gas to flow into streams, reservoirs, etc.

21. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior court within six months.

22. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior courts, by the person into whose water such wasting or other substance shall be conveyed or shall flow, or whose water shall be fouled, by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased (a).

(a) As to the effect of this section on a local Act, see *Parry v. Croydon Commercial Gas Co.* (1863), 15 C. B. (N. S.) 568; 28 J. P. 86; 25 Digest 487, 99.

Daily penalty during the continuance of the offence.

23. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose

water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such person-mentioned person. Section 23.

24. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice (a). Daily penalty during escape of gas after notice.

(a) See *Mose v. Hastings and St. Leonards Gas Co.* (1864), 4 F. & F. 324; 25 Digest 485, 55; *Burrows v. March Gas and Coke Co.* (1872), L. R. 7 Ex. 96; 36 J. P. 517; 25 Digest 84, 83; *Price v. South Metropolitan Gas Co.* (1896), 65 L. J. Q. B. 126; 25 Digest 485, 86. As to a nuisance arising from gasworks, see *Wood v. Conway Corporation*, [1914] 2 Ch. 47; 8 J. P. 249; 25 Digest 486, 94; *Herring v. Lincoln Corporation* (1920), 42 M. C. C. 41; and *Granby v. Bakewell U. D. C.* (1923), 87 J. P. 105; 21 L. G. R. 329; 36 Digest 221, 630.

25. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence. Penalty for fouling water by gas.

26. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers, the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes. Power to open ground and examine gas pipes to ascertain whether water is fouled by gas.

27. If upon any such examination it appear that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination. Ground, etc. to be reinstated.

28. The amount of the expenses of every such examination and repair and of any injury done to the undertakers, shall, in case of any dispute about the same, together with the cost of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered. Expenses to abide result of examination.

29. The amount of the expenses of every such examination and repair and of any injury done to the undertakers, shall, in case of any dispute about the same, together with the cost of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered. How expenses shall be ascertained and recovered.

Section 29.

Nothing to
exempt under-
takers from
being indicted
for a nuisance

29. Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas (a).

(a) See section 9 of the Gasworks Clauses Act, 1871, *post*, p. 4309, and *Jordeson v. Sutton, Southcoates and Drypool Gas Co.*, [1899] 2 Ch. 217; 63 J. P. 692; 25 Digest 486, 92; *Batcheller v. Tunbridge Wells Gas Co.* (1901), 65 J. P. 680; 84 L. T. 765; 25 Digest 487, 100. A company cannot justify a nuisance by setting up incapacity to make or supply gas without so doing (*Att.-Gen. v. Gas Light and Coke Co.* (1877), 7 Ch. D. 217; 42 J. P. 391; 25 Digest 492, 118). But compare with this the decision in *Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409; 36 Digest 162, 44, where it was held that a statutory authority to sink a shaft included all things reasonably necessary, though causing a temporary nuisance. This case was distinguished in *Knight v. Isle of Wight Electric Light and Power Co., Ltd.* (1904), 73 L. J. Ch. 299; 68 J. P. 266; 36 Digest 201, 413, where the nuisance complained of was a continuing nuisance; see also *Midwood v. Manchester Corporation*, [1905] 2 K. B. 597; 69 J. P. 348; 38 Digest 50, 288 (decided with reference to a similar section in the Electric Lighting (Clauses) Act, 1899, Sched., clause 81), in which it was held that the undertakers were liable in damages for an explosion occasioned by a leakage of electricity from one of their mains which ignited gas escaping into the plaintiff's premises in an adjoining street; see also *Farrell v. Limerick Corporation* (1911), 45 Ir. L. T. 169; *Elliott v. Battersea Corporation* (1910), 74 J. P. N. 627; *Charing Cross, Electricity Supply Co. v. Hydraulic Power Co.*, [1914] 3 K. B. 772; 78 J. P. 305; 36 Digest 189, 315; *Manchester Corporation v. Farnworth*, [1930] A. C. 171; 94 J. P. 62; Digest Supp.; and see the note to clause 81 of Schedule to the Electric Lighting (Clauses) Act, 1899, *post*, p. 4980.

But where gas escaped from a main not belonging to a local authority and was ignited by a spark in a box belonging to the local authority as part of their electrical equipment, it was held that the local authority were not liable for injury to a passer-by as the result of the explosion (*Goodbody v. Poplar Borough Council* (1914), 79 J. P. 218; 84 L. J. K. B. 1230; 36 Digest 198, 383).

Profits of the
undertakers.

And with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, be it enacted as follows:

Profits of the
undertakers
limited.

30. The profits of the undertaking to be divided amongst the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate (a).

(a) See *Chelsea Waterworks Co. v. Metropolitan Water Board*, [1904] 2 K. B. 77; 43 Digest 1100, 297; *Kent Waterworks v. Lamplough*, [1904] A. C. 27; 68 J. P. 361; 43 Digest 1101, 300; *Metropolitan Water Board v. New River Co.* (1904), 20 T. L. R. 687; 43 Digest 1100, 294; *Ashton Gas Co. v. Att.-Gen.*, [1906] A. C. 10; 70 J. P. 49; 10 Digest 1162, 8225.

If profits
exceed the
amount
limited, excess
to be invested
and form a
reserved fund.

31. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one-tenth of the nominal capital of the undertakers(a), which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen (b).

- (a) This amount is varied in the case of undertakers, other than local authorities, by s. 3, Gas Undertaking Act, 1929, Vol. V., *post*.
 (b) See *Metropolitan Water Board v. New River Co.* (1904), 20 T. L. R. 687; 43 Digest 100, 294.

**Note to
Section 31.**

32. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in England . . . by two justices . . . that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act (a).

Reserved fund not to be resorted to to meet an extraordinary claim except on certificate.

(a) Words relating to Scotland and Ireland only are here omitted.

33. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the company (a), as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable (b).

When fund amounts to prescribed sum, interest to be applied to purposes of the undertaking.

(a) This amount is varied in the case of undertakers, other than local authorities, by s. 3, Gas Undertakings Act, 1929, Vol. V., *post*.

(b) Certain consumers of gas brought an action against the company which supplied them on the ground that the company had created a reserve fund greatly in excess of that authorised by its special Acts, and had carried over from year to year large undivided profits, thereby avoiding the obligation upon it to reduce the price of the gas which it so supplied:—*Held*, that no such duty as alleged was imposed by the Acts on the company; that the consumers had not control over the affairs of the company, and were not, therefore, entitled to raise the question, the shareholders alone being interested, and that the court would not order the reserve fund and undivided profits to be applied in reduction of the price of the gas in the manner suggested (*Mason v. Ashton Gas Co.* (1886), 50 J. P. 628; 1 L. T. 708; 25 Digest 488, 105).

34. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

If profits are less than the prescribed rate, deficiency may be supplied from the reserved fund.

35. In England . . . the court of quarter sessions . . . may, on the petition of any two gas ratepayers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers, the amount of such expense to be determined by the said court . . . , the actual state and condition of the concerns of the undertakers, and to make report thereof to the said court at the then present or some following sessions . . . ; and the said court . . . may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to; and if it thereupon appear to the said court . . . that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court . . . shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate (a).

If profits are more than the amount prescribed, a rateable deduction to be made in the price of gas.

(a) Words relating to Scotland and Ireland only are omitted from this and the two following sections. The court of quarter sessions has no jurisdiction under this section to appoint a gas engineer to assist an accountant appointed thereunder to examine and ascertain the actual state and condition of the concerns of the gas company, and where such order is made a writ of *certiorari* will lie to bring the order up to be quashed (*R. v. Brindley* (1885), 50 J. P. 534; 54 L. T. 435; 25 Digest 489, 108).

**Note to
Section 35.**

An order cannot be made to reduce the price of gas under this section unless the whole of the reserve fund has been invested and the prescribed dividend paid; nor can an order be made for the payment of costs by the company to the petitioners. The quarter sessions may inquire into the accounts of past years for the purpose of ascertaining the actual condition of the concern, but they cannot disallow and recast them so as to vary the accounts of the year into which they are inquiring (*R. v. Hanley (Recorder of)* (1837), 19 Q. B. D. 481; 52 J. P. 100; 25 Digest 489, 109). Where a corporation supply gas they are not bound to give credit for the value of gas supplied for lighting streets or other public purposes (*Att.-Gen. v. Oldham Corporation* (1892), 14 M. C. C. 195).

Court may order petitioner to pay costs of groundless petition.

36. Provided always, that if, in the case of any petition so presented, it appear to the said court . . . that there was no sufficient ground for presenting the same, the said court . . . may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court . . .) and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

Penalty on undertakers for refusing to produce books, vouchers, etc.

37. If the undertakers shall, for seven days after being required to produce to the said court . . ., or to the said accountant or other person as aforesaid, any books of account or other books, bill, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days; such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior courts.

Account.
Annual account to be made up by undertakers.

38. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account, if the gasworks be situated in England . . . shall be transmitted, free of charge, to the clerk of the peace for the county in which the gasworks are situate . . . and such transmission shall be made on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk of the peace . . . shall be kept by him, and shall be open to inspection by all persons at all seasonable hours, on payment of one shilling for each inspection (a).

(a) Words relating to Scotland and Ireland only are omitted from this section. The section is now superseded by section 15 of the Gas Regulation Act, 1920, Vol. V., *post*. As to the annual account under a local Act, see *Leamington Priors Gas Co. v. Davis* (1886), 18 Q. B. D. 107; 51 J. P. 360; 25 Digest 470, 6, the facts of which are stated in the note to the Gasworks Clauses Act, 1871, s. 35, *post*, p. 4316.

39 (a). . . .

(a) Section 39 as to tender of amends was repealed by the S. L. R. A., 1894. See now the Public Authorities Protection Act, 1893, *post*.

**Recovery of
damages and
penalties.**

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

40. If the gasworks be in England . . . the clauses of the Railways Section 40. Clauses Consolidation Act, 1845 (a), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act . . . (b).

Railway Clause Acts, as to damages, etc. to be incorporated with this and the special Act.

(a) See *ante*, p. 4159.

(b) The parts of this section relating to Scotland and Ireland only are here omitted.

41 (a). . . .

(a) Section 41 related only to Ireland, and was repealed by the S. L. R. A., 1875.

42. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done in England . . . by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices . . . (a)

Acts which may be done by one magistrate.

(a) The parts of this section relating to Scotland and Ireland only are here omitted.

43. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any byelaw in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied, in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by the Metropolitan Police Courts Act, 1839; and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined; and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Penalties, etc. within metropolitan police district. 2 & 3 Vict. c. 71. Appeal, etc.

44. [False evidence] (a).

(a) Repealed by the Perjury Act, 1911.

And with respect to access to the special Act, be in enacted as follows :

45. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the [clerk of the county council] in England . . . of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said [clerk of the county council] . . . shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the Parliamentary Documents Deposit Act, 1837 (a).

Access to special Act.

Copies of special Act.

(a) The parts of this section relating to Scotland and Ireland only are here omitted.

The words in square brackets were substituted by s. 101, L. G. A., 1933, *ante*, p. 867.

7 Will. 4 & 1 Vict. c. 83.

Section 46.

Penalty on undertakers failing to keep or deposit such copies.

Saving as to 57 Geo. 3, c. xxix., etc.

46. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

47. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein (a), or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the city of London.

(a) Now called the Metropolitan Paving Act, 1817, but better known as Michael Angelo Taylor's Act.

Saving as to the rights of the Crown.

48. Nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of her Majesty in right of her Crown, or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

Saving as to future Acts.

49. Nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary conditions of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament (a).

(a) The Public Health (Buildings in Streets) Act, 1888, *post*, p. 4777, is an "Act for improving the sanitary conditions of towns and populous districts" within the meaning of this section (*Grand Junction Waterworks Co. v. Hampton U. D. C.*, [1898] 2 Ch. 331; 62 J. P. 566; 26 Digest 562, 2568). The corresponding section of the Waterworks Clauses Act, 1847, s. 93, does not exempt a water company from the provisions of the P. H. A., 1875, and they are bound to comply with the byelaws made under s. 157 of the latter Act (*Uckfield R. D. C. v. Crowborough District Water Co.*, [1899] 2 Q. B. 664; 43 Digest 1067, 63). See also *London C. C. v. Wandsworth and Putney Gas Co.* (1900), 64 J. P. 500; 82 L. T. 562; 26 Digest 510, 2153. Section 50 is repealed by the S. L. R. A., 1875.

* * * * *

THE WATERWORKS CLAUSES ACT, 1847.

(10 & 11 VICT. c. 17) (a).

An Act for consolidating in One Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water.
[23rd April, 1847.]

Incorporation with special Act.

[1.] This Act shall extend only to such waterworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

(a) Incorporated in part by the P. H. A., 1936, s. 120, *ante*, p. 368 (together with the amending Act of 1863, *post*, p. 4256), and also by the P. H. A., 1875 (Support of Sewers), Amendment Act, 1883, *post*. See notes to those Acts.

For other incorporations, see Supply of Water in Bulk Act, 1934, Vol. V., *post*, and Water Supplies (Exceptional Shortage Orders) Act, 1934, s. 2 (a), Vol. V., *post*.

**Note to
Section 1.**

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows :

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands and streams" shall mean the lands and streams of water which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Words importing the masculine gender shall include females:

The word "person" shall include a corporation, whether aggregate or sole:

The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages, of any tenure:

The word "streams" shall include springs, brooks, rivers, and other running waters:

The word "street" shall include any square, court or alley, highway, lane, road, thoroughfare, or public passage or place, within the limits of the special Act (a):

The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed (b):

The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water:

The word "month" shall mean calendar month:

The expression "superior courts," where the matter submitted to the cognizance of the court arises in England . . . shall mean her Majesty's superior courts of record at Westminster . . . (c).

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

The word "county" shall include riding or other division of a county having a separate commission of the peace . . . (c), and it shall also include county of a city or county of a town:

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands or streams situated not

Section 3.

"Two justices."

wholly in one jurisdiction shall mean a justice acting for the county or place where any part of such lands or streams shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together (c) :

"Quarter sessions."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace :

"The town commissioners."

The expression "the town commissioners" shall mean the parties defined under that title in the special Act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act :

"Inspector."

The word "inspector" shall mean an officer appointed under any local Act relating to the town or district supplied with water under the special Act for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or an officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts.

(a) See *Maddock v. Wallasey L. B.*, *ante*, p. 4164. See also as to the meaning of the word "street" in a local Act, incorporating this Act, *Bristol Waterworks Co. v. Bristol Corporation* (1889), 5 T. L. R. 551. For the purposes of the application of this Act under s. 57 of the P. H. A., 1875 (see now s. 120 of the P. H. A., 1936, *ante*, p. 368), the term "street" includes a private street (*Hill v. Wallasey L. B.*, [1894] 1 Ch. 133; 43 Digest 1062, 34). As to the limits of supply, see *Att.-Gen. v. West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453; 28 Digest 460, 750. As to the delegation of statutory powers, see *Ticehurst and District Water and Gas Co., Ltd. v. Gas and Waterworks Supply and Construction Co., Ltd.* (1911), 55 Sol. Jo. 459; 43 Digest 1087, 202; *In re Woking U. D. C. (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. 300; 78 J. P. 81; 13 Digest 357, 935. As to the limits of supply under the Metropolis Water Act, 1902, see *Sutton District Water Co. v. Metropolitan Water Board* (1926), 90 J. P. 61; 43 Digest 1101, 303.

(b) As to the power of the undertakers to construct works other than those authorised by the special Act, see *Att.-Gen. v. Frimley and Farnborough District Water Co.*, [1908] 1 Ch. 727; 72 J. P. 204; 43 Digest 1067, 64; *Att.-Gen. v. South Staffordshire Waterworks Co.* (1909), 25 T. L. R. 408; *Marriott v. East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70; 72 J. P. 509; 43 Digest 1072, 95; *Att.-Gen. v. Barnet District Gas and Water Co.* (1910), 74 J. P. 193; 102 L. T. 546; 43 Digest 1067, 67.

(c) Words relating to Scotland and Ireland only are here omitted.

Citing the Act.

And with respect to citing this Act, or any part thereof, be it enacted as follows :

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Waterworks Clauses Act, 1847."

Forms in which portions of this Act may be incorporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or

that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Section 5.

* * * * *

And with respect to mines, be it enacted as follows (a) :

Mines.

(a) These sections, 18—27, are incorporated by the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, *post*, p. 4664. These sections amount to a code defining and regulating the mutual rights of water companies and owners of minerals (*South Staffordshire Waterworks Co. v. Mason* (1886), 56 L. J. Q. B. 255; 57 L. T. 116; 11 Digest 153, 354). They very closely resemble ss. 77—82 of the Railway Clauses Consolidation Act, 1845, and the cases decided under that Act may be referred to:—particularly *Midland Rail. Co. v. Miles* (1885), 30 Ch. D. 634; *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632; 11 Digest 100, 628, and *Maritime Coal Co. v. Barry Dock and Rail. Co.* (1886), 2 T. L. R. 803. As to the corresponding law in Canada, see *Davies v. James Bay Ry.*, [1914] A. C. 1043; 11 Digest 153, *w*.

Where land is acquired by agreement for the purposes of constructing waterworks under a special Act which incorporates the Waterworks Clauses Act, 1847, and the undertakers purchase all the mines and minerals under the land so taken, they acquire all the rights of support from minerals under adjacent lands which the vendor had at common law at the time the land was taken. In such a case, ss. 18—27 of the Waterworks Clauses Act, 1847, do not take away the common law right of support from minerals under adjacent lands, or give the owners of such minerals any greater right to work them, so as to let down the surface of the land taken as against the undertakers, than they had against the vendor before the land was taken. In such a case, and, *semble*, in all cases these sections have no reference to lands outside the limit of forty yards, or other limit prescribed by the special Act. The rights of the undertakers and the owner of such minerals in relation to their working are governed by the common law (*New Moss Colliery, Ltd. v. Manchester Corporation*, [1908] A. C. 117; 72 J. P. 169; 11 Digest 154, 356; and see *Howley Park Coal and Cannel Co. v. L. & N. W. Rail. Co.*, [1913] A. C. 11; 11 Digest 153, 353).

18. The undertakers shall not be entitled to any mines of coal, ironstone slate, or other minerals (a) under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Undertakers not entitled to mines unless expressly purchased.

(a) A great number of cases have been decided as to what substances are included in the term minerals. It is necessary to remember that the description of the mines in other Acts or in leases is not always the same, and that the words "other minerals" may not always be *ejusdem generis* with those set out in the text, although they are so in reference to the form of words used in the particular case. The following authorities should be consulted. As to freestone, it was held in *Bell v. Wilson* (1866), 1 Ch. App. 303; 34 Digest 603, 2, to be a mineral, but see now *Symington v. Caledonian Rail. Co.*, [1912] A. C. 87; 11 Digest 150, *l*, where it was held to be a question of fact in each case. Minerals, stone got from quarries (*Micklethwait v. Winter* (1851), 6 Exch. 644; 11 Digest 61, 889); granite from quarries (*Att.-Gen. v. Welsh Granite Co.* (1887), 35 W. R. 617; 3 T. L. R. 573; 11 Digest 62, 891); slate (*Cleveland v. Meyrick* (1867), 37 L. J. Ch. 124; 17 L. T. 238; 34 Digest 604, 8); coprolites (*Att.-Gen. v. Tomline* (1877), 5 Ch. D. 750; 34 Digest 652, 502); oil shale (*Marquis of Linlithgow v. North British Rail. Co.*, [1912] S. C. 1327; 11 Digest 151, *t*); every substance which can be got from underneath the surface of the earth for purposes of profit, such as china clay (*per MELLISH, L.J.*, in *Hest v. Gill* (1872), 7 Ch. App. 669 at p. 712; 34 Digest 606, 41; *G. W. Rail. Co. v. Carpalla United China Clay Co., Ltd.*, [1910] A. C. 83; 74 J. P. 57; 11 Digest 151, 333); all substances obtained from the crust of the earth, other than the surface soil (*Anstruther v. Inland Revenue Commissioners*, [1912] S. C. 1165; 39 Digest 224, *h*); clay (*Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19; 31 J. P. 500); brick-earth and clay below the surface (*Jersey (Earl) v. Neath Guardians* (1889), 22 Q. B. D. 555; 52 J. P. 404; 34 Digest 605, 26; *Shaftesbury v. Wallace*, [1897] 1 I. R. 381; fire-clay (*Caledonian Rail. Co. v. Glenboig Union*

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Section 18.**

Fireclay Co., [1911] A. C. 290; 75 J. P. 377; 34 Digest 606, 36; but not common clay forming the surface or subsoil of land (*Glasgow Corporation v. Farie* (1888), 13 App. Cas. 657; 34 Digest 604, 12; *Shaftesbury v. Wallace*, [1897] 1 I. R. 381; *Re Todd, Birlestone & Co. and N. E. Rail. Co.*, [1903] 1 K. B. 603; 67 J. P. 105; 11 Digest 150, 332; *G. W. Rail. Co. v. Blades*, [1901] 2 Ch. 624; 65 J. P. 791; 34 Digest 608, 50; *North British Rail. Co. v. Turners* (1904), 6 F. (Ct. of Sess.) 900; 11 Digest 151, 537 i; clay which is not commercially workable and stone which is unfit for building purposes are not minerals (*Skey v. Parsons* (1909), 101 L. T. 103; 105 T. L. R. 708; 34 Digest 609, 79). Gravel and sand were held to be minerals in *Scott v. Midland Rail. Co.*, [1901] 1 K. B. 317; 65 J. P. 135; 34 Digest 609, 74; but in *Staples v. Young*, [1908] 1 I. R. 135, it was held to be a question of fact in each case, and sand was held not to be a mineral when it was covered by a thin layer of soil only. See also *Skey v. Parsons*, *supra*. Sandstone was held to be a mineral in *Greville v. Hemingway* (1902), 87 L. T. 443; 34 Digest 609, 78; but not so in *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116; 34 Digest 607, 43. As to whinstone, see *Forth Bridge Rail. Co. v. Dunfermline Guildry*, [1910] S. C. 316. As to mounds of tap-cinder produced in working ironstone mines, see *Boileau v. Heath*, [1898] 2 Ch. 301; 34 Digest 608, 62. And as to what is included in an exception of mines and minerals in a lease, see *Johnstone v. Crompton*, [1899] 2 Ch. 190; 34 Digest 607, 49. The mines referred to in the section include those which can only be worked by open or surface operations (*Midland Rail. Co. v. Robinson* (1890), 15 App. Cas. 19; 54 J. P. 580; 11 Digest 150, 328).

It has been held that the right to pump brine is a right to work minerals for purposes of the Mineral Rights Duty (*Att.-Gen. v. Salt Union*, [1917] 2 K. B. 488; 34 Digest 609, 65).

Map and plan of underground works to be made, and corrected from time to time.

19. The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act; and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district (a).

(a) The map required to be made by the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, s. 3, *post*, p. 4664, was to be made before August 25th, 1884.

See and cf. note (a) to P. H. A., 1936, s. 32 (1), *ante*, p. 107.

Copies of such map or plan to be deposited with clerk of the peace, etc.

20. The undertakers shall from time to time, within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the [clerks of the county council] in England . . . of every county . . . in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England . . . in which such underground work shall be situate, copies of the said map or plan, with all such particulars and all such corrections and additions as aforesaid, so far as relates to such counties . . . and parishes respectively (a).

(a) Words in this section relating to Scotland and Ireland only are omitted. A company who have not deposited a survey and map in accordance with this section have no right to the support of the soil in which their pipes are laid as against the owner of the minerals underneath (*South Staffordshire Waterworks Co. v. Mason* (1886), 56 L. J. Q. B. 255; 57 L. T. 116; 11 Digest 153, 354).

The words in square brackets are in consequence of L. G. A., 1933, s. 101, *ante*, p. 867.

21. The said [clerks of the county council] . . . and . . . parish clerks . . . shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under the Parliamentary Documents Deposit Act, 1837 (a).

Section 21.

Clerks of the peace, etc. to receive and keep copies of the map, etc. and allow inspection.
7 Will. 4 & 1 Vict. c. 83.

(a) Words in this section relating to Scotland and Ireland only are omitted.

As to words in square brackets, see L. G. A., 1933, s. 101, *ante*, p. 867.

22. Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be underground and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do, thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation (a).

As to working of mines lying near the works

(a) See the P. H. A., 1875 (Support of Sewers) Amendment Act, 1883, s. 3, *post*, p. 4666, as to the power of a local authority to define the extent to which they require support to be left, and as to the mode of assessing compensation. To justify a notice under this section there must be a *bonâ fide* intention to work the mines by the owner or his lessees or licensees (*Midland Rail. Co. v. Robinson*, *ante*, p. 4108). The service of a notice under this section requiring the owner to abstain from working his minerals has, like a notice to treat under the Lands Clauses Acts, the effect of creating a statutory contract between the parties whereby the one party is bound to abstain from working his minerals and the other is bound to make compensation therefor. The award in the arbitration is final both as to the amount of compensation to be paid and (unless the title of the mineral owner is in dispute) as to the obligation of the undertakers to pay the amount (*Clippens Oil Co., Ltd. v. Edinburgh and District Water Trustees* (1901), 38 Sc. L. R. 354).

If the party entitled to the minerals begins working without giving the notice, the undertakers may bring an action for an injunction and damages, but the wrongful working does not debar the party from afterwards giving the notice and claiming compensation (*Edinburgh Water Trustees v. Clippens Oil Co., Ltd.* (1898), 25 R. (Ct. of Sess.) 504).

Where there has been a rise in the value of mineral since the notice, and but for the notice the mine owner would have obtained the benefit of the rise, consideration must be had to the rise in assessing the compensation (*Bullfa and Merthyr Dare Steam Collieries* (1891), *Ltd. v. Pontypridd Waterworks Co.*, [1903] A. C. 426; 11 Digest 129, 186).

The compensation payable by a railway company under s. 78 of the Railways Clauses Consolidation Act, 1845, in respect of such mines as they require to be left unworked is the full value of the minerals required to be left unworked, namely, what the minerals would have sold for if worked, less the cost of working them (*Eden v. N. E. Rail. Co.*, [1907] A. C. 400; 71 J. P. 450; 11 Digest 157, 374). Where the minerals had no marketable value but were of value to the claimants who had a cement factory close by, it was held that their value to the claimants was what they might fairly be expected to have made by working in the ordinary and reasonable manner in which they would have been worked but for the notices to treat; that the profits which they would have made by turning them into cement might properly be taken into consideration by an arbitrator as an indication, though not as a measure, of that value; and that the value was not affected by the fact that the claimants owned large quantities of the same minerals which they might have worked instead of the minerals in question (*Rugby Portland Cement Co. v. L. & N. W. Rail. Co.*, [1908] 2 K. B. 606; 72 J. P. 245; 11 Digest 162, 417). A county council, acting under the Small Holdings and Allotments Act, 1903, and an Order of the Board of Agriculture which incorporated ss. 77 and 78 of the Railways Clauses Consolidation Act, 1845, gave notice to treat to the owner of a farm. In arbitration proceedings it was con-

**Note to
Section 22.**

tended that the arbitrator should take into consideration the fact that the council merely acquired an interest in the surface without a right to support. It was held, that in assessing the value of the land the arbitrator was to deal with it as if there were no mines to be considered, and nothing but the surface; that the legislature had conferred rights upon purchasers in substitution for the common law right of support, and that the arbitrator was entitled, although he might not be actually bound, to disregard the absence of a right to support when assessing the value (*Carlisle (Executrix of Earl) v. Northumberland C. C.* (1911), 75 J. P. 539; 105 L. T. 797; 42 Digest 2, 6). See also *Butterley Co., Ltd. v. New Hucknall Colliery Co., Ltd.*, [1910] A. C. 381; 34 Digest 706, 940; *Howley Park Coal and Cannel Co. v. L. & N. W. Rail. Co.*, ante, p. 4179.

As to the right to interest upon an award of compensation, see *Fletcher v. L. & Y. Rail. Co.*, [1902] 1 Ch. 901; 66 J. P. 631; 40 Digest 197, 1650; and *Re Richard & G. W. Rail. Co.*, [1905] 1 K. B. 68; 69 J. P. 17; 11 Digest 156, 367.

If undertakers do not state their willingness to treat for payment of compensation owner may work the mines.

23. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same, by means of engines or otherwise, as if this Act and the special Act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner, the same shall be forthwith repaired or removed (as the case may require), and such damage made good by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby, by action in any of the superior courts (a).

(a) The mines may be worked by open workings if that is usual in the district (*Midland Rail. Co. v. Miles*, ante, p. 4179); and see *Midland Rail. Co. v. Robinson*, ante, p. 4180; *Ruabon Brick and Terra Cotta Co. v. G. W. Rail. Co.*, [1893] 1 Ch. 427; 11 Digest 155, 364; *In re An Arbitration between Lord Gerard and L. & N. W. Rail. Co.*, [1895] 1 Q. B. 459; 34 Digest 715, 995. See, further, as to the right to work the mines so as to let down the surface, *Consett Waterworks Co. v. Ritson* (1888), 22 Q. B. D. 318; 53 J. P. 373; on appeal (1889) 22 Q. B. D. 702; 59 J. P. 199; 11 Digest 153, 355. For a case involving a claim to work mines under a canal in pursuance of a special Act, see *Knowles & Sons v. L. & Y. Rail. Co.* (1889), 14 App. Cas. 248; 54 J. P. 103; 11 Digest 160, 399. Apparently the undertakers could not be compelled by *mandamus* to reinstate the waterworks if damaged by the working of the mines. See *R. v. G. W. Rail. Co.* (1893), 58 J. P. 74; 62 L. J. Q. B. 572; 42 Digest 714, 1325.

Mining communications.

24. If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Undertakers to make compensation to owner lessee, or occupier of mines for expenses incurred by severance of mines, or by interruptions of or restric-

25. Except where otherwise provided for by agreement, the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such

reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act, and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid, and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid touching the price of such minerals, the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act, if the undertaking shall be situate in England . . . (a).

Section 25.

tions on works, and for minerals not obtained. Disputes to be settled by arbitration.

(a) Words relating to Scotland and Ireland only are here omitted. See the P. H. A., 1875 (Support of Sewers) Amendment Act, 1883, s. 3 (4), *post*, p. 4666, as to the method of settling disputes as to compensation. As to the compensation which may be claimed, see *Whitehouse v. Wolverhampton and Walsall Rail. Co.* (1869), L. R. 5 Ex. 6; 21 L. T. 558; *Barnsley Canal Co. v. Twibell* (1844), 7 Beav. 19; 11 Digest 162, 410; *Ex parte Neath and Brecon Rail. Co.* (1876), 2 Ch. D. 201; *Holliday v. Wakefield Corporation*, [1891] A. C. 81; 55 J. P. 325; 11 Digest 157, 378.

26. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the undertakers, after giving twenty-four hours notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Power to undertakers to enter and inspect the working of mines, after giving notice of the same.

27. Nothing in this or the special Act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act (a).

Nothing to prevent undertakers from being liable to actions for injury done to mines.

(a) This section is limited to damage to mines (*per* VAUGHAN WILLIAMS, J., in *Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch., at p. 415). See also *Graigola Merthyr Co. v. Swansea Corporation*, [1928] Ch. 31; on appeal, [1928] Ch. 235; 92 J. P. 8; 43 Digest 1076, 122. This case went to the House of Lords on another point ([1929] A. C. 344).

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (a):

Laying of pipes.

(a) Sections 28—34 are incorporated by the P. H. A., 1936, s. 279, *ante*, p. 568 (see also *ibid.*, s. 119, *ante*, p. 367). See also s. 149, P. H. A., 1875, and the notes thereto, *post*; s. 80 of the P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1152, and the corresponding clauses of the Gasworks Clauses Act, 1847, *ante*, p. 4165.

28. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes conduits, service pipes (a), and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby (b) or by the

Power to break up streets, etc. under superintendence, and to open drains, and to lay pipes, etc.

Section 28. special Act granted, and making compensation for any damage which may be done in the execution of such powers (c).

(a) See *Grand Junction Waterworks Co. v. Rodocanachi*, [1904] 2 K. B. 230 ; 68 J. P. 290 ; 43 Digest 1104, 325 ; *Colne Valley Water Co. v. Hall* (1907), 72 J. P. 25 ; 98 L. T. 398 ; 43 Digest 1086, 193 ; *Parnell v. Portsmouth Waterworks Co.* (1910), 75 J. P. 99 ; 8 L. G. R. 1029 ; 43 Digest 1086, 194. And as to "mains," see *Whittington Gas Light and Coke Co. v. Chesterfield Gas and Water Board*, ante, p. 4165.

(b) See *Harpur v. Swansea Corporation*, [1913] A. C. 597 ; 77 J. P. 381 ; 43 Digest 1097, 272.

(c) Where under a special Act incorporating this Act, a water company has within the period fixed by the special Act for the completion of its works laid a main according to deposited plans, the company may, after the expiration of that period, lay down a second main having regard to this Act, and particularly where the special Act gives them power to "extend, enlarge or alter any of their mains or pipes at any time and from time to time as occasion may require, for the purpose of supplying the inhabitants within the limits of the Act with water," due regard being had to the requirements of the special and general Acts as to notice and otherwise before breaking up the road for the purpose (*East Molesey L. B. v. Lambeth Waterworks Co.*, [1892] 3 Ch. 289 ; 43 Digest 1072, 96). The power given by this section includes any works which the undertakers may deem necessary for the purpose of regulating the supply of water, and is not confined to the laying down of apparatus underground, but enables the undertakers to place such works on the surface of the street as may not be inconsistent with the substantial reinstatement of the road in its previous condition or create a nuisance ; and it was held, therefore, that a water company was authorised by the section to place in the pavement of a street covers or guard-boxes to protect stop-valves placed for the purpose of regulating the supply of water in the communication pipes by which water was supplied to premises in the street, such covers or guard-boxes not creating a nuisance or being inconsistent with the substantial reinstatement of the pavement (*East London Waterworks Co. v. St. Matthew, Bethnal Green, Vestry* (1886), 17 Q. B. D. 475 ; 50 J. P. 820 ; 43 Digest 1071, 94). Where the cover of such a guard-box to a stop-cock attached to a service pipe supplying a private house was out of repair and could not be repaired without breaking up the street, and an accident occurred by a foot passenger tripping over it, the company were held liable, even assuming that the property in the guard-box was in the occupier of the private house, because the company had power to break up the street to repair it, which the occupier could not do (*Chapman v. Fylde Waterworks Co.*, [1894] 2 Q. B. 599 ; 59 J. P. 5 ; 43 Digest 1085, 188). The case of *Batt v. Metropolitan Water Board*, [1911] 2 K. B. 965 ; 75 J. P. 545 ; 43 Digest 1099, 288, does not apply to a borough where this Act is in force for it was decided with reference only to s. 8 of the Metropolitan Water Board (Charges) Act, 1907, and the same observation applies to *Mist v. Metropolitan Water Board* (1915), 79 J. P. 495 ; 84 L. J. K. B. 2041 ; 43 Digest 1098, 282. See also *Osborn v. Metropolitan Water Board* (1910), 74 J. P. 190 ; 102 L. T. 217 ; 43 Digest 1099, 287 ; *Rosenbaum v. Metropolitan Water Board* (1910), 75 J. P. 12 ; 103 L. T. 739 ; 43 Digest 1099, 288 ; *Stacey v. Gas Light and Coke Co. and Metropolitan Water Board* (1910), 9 L. G. R. 174 ; 43 Digest 1085, 197. The section merely enables a water company to lay pipes under streets in connection with the undertaking authorised by their special Acts, and if they are being laid in connection with unauthorised works the owner of the soil can sue the water company in trespass, raise the question of *ultra vires* and obtain an injunction without joining the Attorney-General (*Marriott v. East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70 ; 72 J. P. 509 ; 43 Digest 1072, 95).

Public water commissioners in Scotland had statutory authority to lay a line of water pipes along a road which passed over two girder bridges belonging to a railway company. These bridges were constructed of several flat girders with spaces between them. Small transverse girders were placed on these main girders and supported iron sole plates forming a floor on which the material for the roadway was placed. This construction gave the bridges a very thin skin, within which there was not sufficient space to lay the water mains. Accordingly, the commissioners wanted to remove the sole plates and hang their water mains by iron bars attached to the cross-girders, carrying the pipes through the stone abutments forming the solid ends of the bridges on either side above the cuttings :—*Held*, that the powers conferred by ss. 28 and 29 of this Act did not entitle the commissioners to interfere with the weight-bearing portions of the bridges and they were interdicted from doing what they proposed (*Glasgow Corporation v. Glasgow and South Western Rail. Co.*, [1895] A. C. 376 ; 59 J. P. 788 ; 43 Digest 1072, 100). This case was followed in another Scotch case, *Caledonian Rail. Co. v. Glasgow Corporation* (1901), 3 F. (Ct. of Sess.) 526, where it was also held that "tunnels" meant tunnels similar in character to sewers and drains and did not apply to a railway tunnel, and that the right to interfere with did not warrant the permanent displacement or removal of tunnels.

Undertakers
not to enter on

29. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service

pipe, or other work in any land not dedicated to public use (a) without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down. **Section 29.**

private land without consent.

(a) A public street or footpath is "land dedicated to public use," so that pipes in connection with authorised works could be laid without the consent of the owner of the soil (*Marriott v. East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70; 72 J. P. 509; 43 Digest 1072, 95). See, further, note (b) to s. 7 of the Gasworks Clauses Act, 1847, *ante*, p. 4166.

30. Before the undertakers open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen (a). Notice to be served on persons having control, etc. before breaking up streets or opening drains.

(a) See the notes to s. 8 of the Gasworks Clauses Act, 1847, *ante*, p. 4166.

31. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof (a), or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer (b). Streets or drains not to be broken up except under superintendence of persons having control of the same.

(a) That is, after notice to the highway authority sufficient to enable them to judge whether what is proposed ought to be done without modification (*Edgware Highway Board v. Colne Valley Water Co.* (1877), 46 L. J. Ch. 889; 43 Digest 1072, 97). In the same case it was held that the plan should show not only the mode and manner of opening the street, but also the depth and position of the cutting, and such other particulars as would enable the road authority to judge whether what was proposed to be done should be accepted without modification without going to the justices. This was approved of by the Court of Appeal in *East Molesey L. B. v. Lambeth Waterworks Co.*, [1892] 3 Ch. 289; 43 Digest 1072, 96. See also the notes to s. 8 of the Gasworks Clauses Act, 1847, *ante*, p. 4166.

(b) Compare *Metropolitan Water Board v. Bradley* (1910), 74 J. P. 331; 102 L. T. 893; 43 Digest 1102, 312.

32. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall Streets, etc. broken up to be reinstated without delay.

Section 32. cause a light sufficient for the warning of passengers to be set up and kept thereagainst, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside (a).

(a) The mere passive omission by a road authority to rectify a subsidence in a road in their area which has been originally occasioned by the neglect of a water company to make the road after having broken it up for the purposes of their undertaking does not exonerate the water company from liability for an injury caused to a person using the road by reason of the subsidence (*Hartley v. Rochdale Corporation*, [1908] 2 K. B. 594; 72 J. P. 343; 43 Digest 1098, 235). This section imposes a continuing duty upon undertakers to remedy any neglect in an improper filling in of the ground and accordingly time does not begin to run under the Public Authorities Protection Act, 1893, *post*, so long as that duty remains undischarged (*Huyton and Roby Gas Co. v. Liverpool Corporation*, [1926] 1 K. B. 146; 90 J. P. 45; 43 Digest 1097, 269). As to the reinstatement of an unadopted street, see *Withington v. Bolton B. C.*, [1937] 3 All E. R. 108; Digest Supp.

Penalty for delay in reinstating streets, etc.

33. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or, if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, persons having control of streets, etc. may reinstate them.

34. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same way as damages are recoverable under this and the special Act (a).

(a) See the P. H. A., 1936, s. 293, *ante*, p. 610. It would seem that if the local authority employ a contractor to do the work they may recover from the undertakers not only the sums paid to the contractor for the work actually done by him, but also the expenses reasonably incurred in superintending the work done by the contractor (*New River Co. v. Westminster City Council* (1904), 68 J. P. 358; 73 L. J. K. B. 1009); but they cannot recover any sum in respect of such supervision, if in fact they have incurred no expense in respect thereof (*S. C. sub nom. Metropolitan Water Board v. Westminster City Council* (1905), 70 J. P. 52; 75 L. J. K. B. 384; 43 Digest 1097, 271).

Supply of water.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Constant supply of water to be kept for domestic use of

35. The undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants (a) of the town or district within the limits of the Special Act, who, as hereinafter provided, shall be entitled to demand a supply,

and shall be willing to pay water rate for the same (b); and such supply shall be constantly laid on at such a pressure as will make the water reach the top story of the highest houses within the said limits, unless it be provided by the special Act that the water to be supplied by the undertakers need not be constantly laid on under pressure; and the undertakers shall cause pipes to be laid down and water to be brought to every part of the town or district within the limits of the special Act whereunto they shall be required by so many owners or occupiers of houses in that part of the town or district as that the aggregate amount of water rate payable by them annually, at the rates specified in the special Act, shall be not less than one tenth part of the expence of providing and laying down such pipes; provided that no such requisition shall be binding on the undertakers, unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least (c).

Section 35.

all inhabitants entitled to demand a supply.

(a) This section was fully discussed in *Read v. Croydon Corporation*, [1938] 4 All E. R. 631; 103 J. P. 25; Digest Supp. In that case a ratepayer and his daughter contracted typhoid through drinking water supplied by a local authority, and it was found on the facts that the authority had not been negligent in the selection of the gathering ground nor in selection and supervision of its workmen but that they had been negligent in that, during the carrying out of certain work at a well, precautions in the form of continual analysis of the water, searching inquiry into the antecedents of the workmen, and incessant supervision over them, were not taken. It was held that the authority were guilty of negligence at common law and also of a breach of statutory duty under this section, and further that the penalty imposed by this Act was not an exclusive remedy and that an action for damages for breach of the statutory duty might also be brought; but that such last-mentioned action might be brought only by a ratepayer, with the result that the ratepayer succeeded and the daughter failed. The words of this section "sufficient for the domestic use of all the inhabitants" do not define the class to which the duty is owed, but prescribe the quantity and quality of the water to be supplied; but the class of persons entitled to demand a supply under this section must be the same as the class of persons to whom there is a duty to supply under s. 53, *post*, p. 4180, and accordingly both duties are owed to the class of persons described in s. 53 (*Read v. Croydon Corporation, supra*).

(b) The only statutory duty owed by a supplying authority to a ratepayer in regard to the quality of water to be supplied is that imposed upon them by this section, namely, to provide and keep in the pipes laid down by them a supply of pure and wholesome water, and if this is complied with the authority are not liable for any breach of statutory duty (*Barnes v. Irwell Valley Water Board*, [1939] 1 K. B. 21; [1938] 2 All E. R. 650; 102 J. P. 373; Digest Supp.).

(c) This section is not incorporated with the P. H. A., 1936, and was not with the P. H. A., 1875. See, however, as to the giving of guarantees by district councils under this section, s. 123 of the P. H. A., 1936, *ante*, p. 373.

* * * * *

And with respect to the communication pipes to be laid by the undertakers be it enacted as follows (a):

Pipes to be laid by the undertakers.

(a) Sections 44—51, 53—71, 73—74, are incorporated by the P. H. A., 1936, s. 120, *ante*, p. 368. Proviso (a) to that section provides that the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof.

44. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier *with the consent in writing of the owner, or reputed owner, of any such house, or of the agent of such owner (a)*, and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act, made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers; and the undertakers may charge

Undertakers to lay down communication pipes, on request of occupier and with consent of owners.

Section 44. for such pipes and works, in addition to the water rate, such reasonable annual rent (b) as shall be agreed upon, or, in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in England . . . be settled by two justices . . . and such rent shall be chargeable on and recoverable from the occupier, or, in his default, from the owner of such house, at the same times and in the same manner as water rates ; and such pipes and other works shall not be subject to distress . . . nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained (c).

(a) These words are to be omitted. See the P. H. A., 1936, s. 120, proviso (d), *ante*, p. 368. As to the meaning of the expression "consumer" in a special Act, see *Cooke, Sons & Co. v. New River Governor & Co.* (1889), 14 App. Cas. 698; 54 J. P. 260; 43 Digest 1091, 229.

(b) This rent may be deducted from the rent paid to the owner. See the P. H. A., 1936, s. 120, proviso (d), *ante*, p. 368.

(c) Words relating to Scotland and Ireland only are omitted from this section.

Penalty on undertakers for neglect, etc. to lay communication pipes.

45. If, upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

On non-payment of rate, or if house be unoccupied, undertakers may remove pipes, etc. provided by them.

46. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines ; and if such owner, after ten days notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works ; and the balance of such principal money, after deducting the value of such pipes and other works, with all arrears of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being, in the same manner as water rates are directed by this or the special Act to be recovered : Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him ; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid, on demand.

Owner to be at liberty to purchase the pipes.

47. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent at that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

Pipes to be laid by the inhabitants.

And with respect to the communication pipes to be laid by the inhabitants (a), be it enacted as follows :

(a) These provisions, as incorporated with the P. H. A., 1936, are to have effect subject to the provisions of s. 121 of that Act (see *ibid.*, s. 120, proviso (b)). Further, they only

apply in districts, or parts of districts, where the local authority lay any pipes for the supply of any of the inhabitants thereof (*ibid.*, s. 120, proviso (a), *ante*, p. 368).

**Note to
Section 47.**

48. Any owner or occupier of any dwelling-house, or part of a dwelling-house within the limits of the special Act who shall wish to have water from the waterworks of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained [as respects any ground not forming part of the street (a)] the consent of the owners and occupiers of such ground (b), and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in England . . . by two justices . . . or in either case by the inspector to be appointed as aforesaid: Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so (c).

Power to inhabitants to lay service pipes from houses to pipes of undertakers.

(a) The words in square brackets are not part of the section as enacted, but are to be read in for purposes of the P. H. A., 1936 (see P. H. A., 1936, s. 120, proviso (e)).

(b) The ground referred to must be private ground intervening between his premises to be supplied and the water main. Power to open streets is given in express terms by s. 52, *post*, p. 4190.

(c) Words relating to Scotland and Ireland are omitted from this section. An action lies for cutting off by the undertakers of a connection lawfully and properly made without lawful cause (*Gale v. Rhymney and Aber Valleys Gas and Water Co.* (1903), 67 J. P. 430; 89 L. T. 399; 43 Digest 1084, 178). As to the liability to repair communication pipes, see *Parnell v. Portsmouth Waterworks Co.* (1910), 75 J. P. 99; 8 L. G. R. 1029; 43 Digest 1086, 194, and compare *Colne Valley Water Co. v. Hall* (1907), 72 J. P. 25; 43 Digest 1086, 193. See also *Batt v. M. W. B.*, [1911] 2 K. B. 965; 43 Digest 1099, 286; *Chapman v. Fylde Waterworks Co.*, *ante*, p. 4184.

49. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England . . . be settled by two justices . . . or in either case by the inspector to be appointed as aforesaid (a).

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor.

(a) See note (b) to s. 48, *supra*.

50. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Bore of service pipes.

51. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days' notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal, and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay

Service pipes may be removed after giving notice.

Penalty for removing pipes without notice.

Section 51. in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Power to
inhabitants to
break up
pavements, etc.

52. (a) Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises (*b*), and any sewer or drain therein, for any such purpose as aforesaid, doing as little damage as may be (*c*), and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act (*d*).

(*a*) This section is not incorporated with the P. H. A., 1936, by *ibid.*, s. 120, but wider provisions to the same effect are made by *ibid.*, s. 121, *ante*, p. 371.

(*b*) See *Pearson v. Tenterden Corporation* (1910), 74 J. P. 405; 43 Digest 1085, 187.

(*c*) See *R. v. East and West India Docks, etc. Rail. Co.*, *ante*, p. 4165.

(*d*) A waterworks company is not liable for the negligence of an occupier in opening a street under this section. The word "pavement" as used in this section is not confined to the footpath only. See *Glover v. East London Waterworks Co.* (1867), 32 J. P. 280; 17 L. T. 475; 43 Digest 1085, 186.

As to the power of a company to require a consumer to fix a screw-down valve in the street to shut off water from the premises as apparatus for regulating the supply within the meaning of a special Act, see *Ward v. Folkestone Waterworks Co.* (1890), 24 Q. B. D. 334; 54 J. P. 628; 43 Digest 1096, 262.

Right of owners
or occupiers to
supply of water
for domestic
purposes.

53. Every owner and occupier of any dwelling-house (*a*) or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered (*b*) the water rate payable in respect thereof, according to the provisions of this and the special Act (*c*), be entitled to demand and receive from the undertakers (*d*) a sufficient supply of water for his domestic purposes (*e*).

(*a*) As to what is a "private dwelling-house," see *Bristol Guardians v. Bristol Waterworks Co.*, [1914] 1 A. C. 379; 78 J. P. 217; 43 Digest 1066, 62. In that case it was held that the right to demand a supply was by the special Act limited to private dwelling-houses, and that a workhouse was not within this description. This case was followed in *Northern Theatres Co. v. Shillito*, [1925] 2 K. B. 100; 89 J. P. 101; 43 Digest 1079, 140 (a theatre).

(*b*) The occupier of premises used as a post office which were not rated has been held to be entitled to a supply of water for domestic purposes as of right without prepayment of the water rate (*Postmaster-General v. Nenagh U. D. C.*, [1913] 1 I. R. 238; 43 Digest 1078, *r*).

(*c*) This class of persons is also the class to whom a duty is owed under s. 35, *ante*, p. 4186 (see *Read v. Croydon Corporation*, cited in the notes to that section).

(*d*) See *Pitts v. Plymouth Corporation*, [1912] 3 K. B. 301; 43 Digest 1091, 223.

(*e*) As to the duty of the company to supply water fit for domestic use, see *Att.-Gen. v. North Shields Waterworks Co.* (1892), Times, May 12th. The supply of water for the use of a horse and the washing of a carriage in a stable attached to a dwelling-house, and used for the sole accommodation of the occupier, was held to be for domestic use in *Bushby v. Chesterfield Waterworks, etc. Co.* (1858), El. B. & E. 176; 22 J. P. 689; 43 Digest 1081, 157. But see the Waterworks Clauses Act, 1863, s. 12, *post*, p. 4258. The guardians of a union are entitled under this section to supply to a workhouse, such a supply being for domestic purposes (*Liskeard Union v. Liskeard Waterworks Co.* (1881), 7 Q. B. D. 505; 45 J. P. 780; 43 Digest 1079, 141), but the court will distinguish between the different purposes for which water is supplied to such an institution (*Chester Waterworks Co. v. Chester Union* (1908), 72 J. P. 121; 98 L. T. 701; 43 Digest 1079, 142). This case was discussed and followed in *Frederick v. Bognor Water Co.*, [1909] 1 Ch. 149; 72 J. P. 501; 43 Digest 1080, 145, decided under a special Act, in which it was held that the keeping of a boarding school in which water was used for the domestic purposes of all the inmates was not carrying on a "business for which water is required." The phrase "domestic purposes" includes a supply for a fixed bath (*Weaver v. Cardiff Corporation* (1883), 47 J. P. 599; 48 L. T. 906;

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Section 53.**

43 Digest 1092, 235), unless baths are excluded by express words (*Walker v. Lambeth Waterworks Co.* (1894), 58 J. P. 736; 71 L. T. 75; 43 Digest 1081, 151); and a supply of water for a swimming-bath erected and used for the purposes of the business of a school is not a supply for "domestic purposes" (*Barnard Castle U. D. C. v. Wilson*, [1902] 2 Ch. 746; 43 Digest 1080, 147, and see *Frederick v. Bognor Water Co.*, [1909] 1 Ch. 149; 72 J. P. 501; 43 Digest 1080, 145). On the other hand, water supplied for domestic purposes is none the less so supplied because the house may be used as a boarding house (*Pidgeon v. Great Yarmouth Waterworks Co.*, [1902] 1 K. B. 310; 66 J. P. 309; 43 Digest 1081, 155), or as a school (*South-West Suburban Water Co. v. St. Marylebone Guardians*, [1904] 2 K. B. 174; 68 J. P. 257; 43 Digest 1078, 139). It has been held that water for non-domestic purposes does not include water for watering a garden (*per JESSEL, M.R.*, in *Low v. Lambeth Waterworks Co.*, not reported, and see 26 & 27 Vict. c. 93, s. 12, *post*, p. 4258). See, however, *Bristol Waterworks Co. v. Uren*, *post*, p. 4197, and *Grand Junction Waterworks v. Neal* (1895), 30 L. J. Newsp. 85. And water used by a person carrying on the profession of a physician or surgeon for washing a motor car used in his profession is not supplied for a trade manufacture or business within 26 & 27 Vict. c. 93, s. 12, so as to be excluded from being considered as supplied for domestic purposes (*Harrogate Corporation v. Mackay*, [1907] 2 K. B. 211; 71 J. P. 458; 43 Digest 1081, 158). Water supplied for use in a dentist's surgery, or a medical practitioner's surgery and dispensary, is not used for non-domestic purposes (*Manchester Corporation v. Buttle*, *infra*; *Kingston-upon-Hull Corp'n. v. Yuille*, [1939] 2 K. B. 769; [1939] 2 All E. R. 48; Digest Supp.). A gas company provided at their works certain sanitary conveniences as required by the Factory and Workshop Act, 1901. No one resided at the works, which were exempt from inhabited house duty. It was held that the question was not the character of the premises, but the character of the purposes for which the water was used; that the supply in question was for domestic purposes; and that the company were not entitled to a supply by meter as for trade purposes under s. 16 of the Metropolitan Water Board (Charges) Act, 1907 (*South Suburban Gas Co. v. Metropolitan Water Board*, [1909] 2 Ch. 666; 73 J. P. 503; 43 Digest 1080, 149). This was approved in *Metropolitan Water Board v. Avery*, [1914] A. C. 118; 78 J. P. 121; 43 Digest 1080, 150, where it was held that under their local Act the Board were bound to supply water for washing up plates and dishes in a public-house where luncheons were served at the rate for domestic purposes. But where it was necessary to construe an Act which provided that the Board should not be bound to supply otherwise than by meter to a house used wholly or partly for any trade it was held that the test was the character of the building and not the use to which the water was put (*Oddenino v. Metropolitan Water Board*, [1914] 2 Ch. 734; 79 J. P. 89; 43 Digest 1081, 161). And this decision was followed in *Barrett v. Ilkeston Corporation*, [1917] 1 K. B. 827; 81 J. P. 133; 43 Digest 1079, 144 (Beer-house) and *Manchester Corporation v. Buttle*, [1929] 2 Ch. 390; 94 J. P. 33; Digest Supp. (Dentist's surgery). Water supplied to urinals and water-closets at a railway station and to a tap used for drinking purposes and for cleansing the platforms is not supplied for domestic purposes (*Metropolitan Water Board v. L. B. & S. C. Rail. Co.*, [1910] 2 K. B. 890; 74 J. P. 409; 43 Digest 1082, 164). A supply of water to a factory for drinking and washing by workmen employed there and for urinals and water-closets provided for their use is a supply for domestic purposes (*Colley's Patents, Ltd. v. Metropolitan Water Board*, [1912] A. C. 24; 76 J. P. 33; 43 Digest 1081, 162). Water supplied for a public-house, where, in addition to the ordinary consumption of water in such a case, a catering business is carried on, is water supplied for domestic purposes (*Metropolitan Water Board v. Avery*, *supra*). It is not easy to reconcile with this decision the case of *Airdrie, Coatbridge and District Water Trustees v. Flanagan* (1906), 8 F. (Ct. of Sess.) 932, where water supplied for a public-house mainly for sanitary purposes and cooking was held not to be a supply for domestic purposes. A golf club-house in which no one slept was held not to be a "house," and therefore not entitled to a supply of water at the domestic rate (*Fergusson v. Prestwick (Provost, etc. of)*, [1909] S. C. 94, decided under the Burgh Police (Scotland) Act, 1892, ss. 4, 263, 264). Where such extra charges are expressly authorised for water-closets, that means water-closets used as such and having water laid on to them (*Roberts v. South Essex Waterworks Co.* (1903), 67 J. P. 404; 1 L. G. R. 719; 43 Digest 1092, 237).

Where a supply was cut off for non-payment of water rates, the company were held not warranted in refusing to supply a subsequent tenant until the arrears were paid (*Sheffield Waterworks Co. v. Wilkinson* (1879), 4 C. P. D. 410; 43 J. P. 703; 43 Digest 1094, 249). See, further, as to the cutting off of a supply, the Water Companies (Regulation of Powers) Act, 1887, *post*, p. 4697.

As to the right of a company to cut off the supply when the consumer has failed to provide a meter for water supplied for purposes other than for "family use," see *Sheffield Waterworks Co. v. Carter* (1882), 8 Q. B. D. 632; 46 J. P. 548; 43 Digest 1091, 230. And as to the obligation to provide a meter in such case, see *Sheffield Waterworks Co. v. Bingham* (1883), 25 Ch. D. 443; 43 Digest 1092, 231.

The company are only bound to furnish a reasonable supply, that is, a supply which is

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reasonable according to the means at their disposal (*Jackson v. Farnham Water Co.* (1887), 3 T. L. R. 632).

As to drought being an unavoidable cause preventing the supply and excusing the undertakers from furnishing a sufficient supply, see *Industrial Dwellings Co. v. East London Waterworks Co.* (1894), 58 J. P. 430; 43 Digest 1078, 133.

As to the meaning of the words "require a supply of water" in s. 17 of the Metropolitan Water Board (Charges) Act, 1907, see *Metropolitan Water Board v. Johnson & Co.*, [1913] 3 K. B. 900; 77 J. P. 384; 43 Digest 1086, 199.

**Protection of
water.**

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows:

Persons using
water not
required to be
laid on at high
pressure to pro-
vide cisterns,
etc.

54. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop-cock, in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball, and stop-cock in good repair so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball, or stop-cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop-cock shall be provided or repaired, as the case may require (a).

Penalty for
neglect.

(a) Where a company were entitled to require the provision of "proper ball and stop-cocks, or other necessary apparatus for regulating the supply," it was held that they could not require a screw-down valve to be inserted in the communication pipe laid in the street so that the water might be shut off from the premises on any indication of waste (*Ward v. Folkestone Waterworks Co.*, ante, p. 4190).

As to the conditions of constant supply in the metropolis, see *West Middlesex Waterworks Co. v. Tappenden* (1888), 5 T. L. R. 477.

Penalty for
suffering
cistern, etc.
to be out of
repair so that
water is wasted.

55. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball, or stop-cock to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds (a).

(a) Section 55 was repealed by the S. L. R. A., 1875, so far as it relates to special Acts with which the Waterworks Clauses Act, 1863, post, p. 4256, is incorporated. The owner of a house let to a tenant upon a weekly tenancy, but himself liable to payment of the water rate by reason of the house being under the annual value of £10 (see s. 72, post, p. 4199), is "a person supplied with water" within the meaning of this section (*Brock v. Harrison*, [1899] 1 Q. B. 958; 63 J. P. 455; 43 Digest 1096, 265).

Undertakers
may repair
cisterns, etc.

56. The undertakers may repair any such cistern, pipe, ball, or stop-cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received (a) as damages.

(a) *Sic* in Parliament Roll. It should of course be "recovered." It was held that the work of repair for the expenses of which the owner of a defective communication pipe was liable under the M. W. B. (Various Powers) Act, 1907, s. 71, was limited to work done after the Board had ascertained that it was from his pipe that the leakage of water came, and did not include an exploratory opening of the ground for the purpose of locating the source of the leakage (*David v. Metropolitan Water Board*, [1919] 1 K. B. 44; 83 J. P. 58; 43 Digest 1086, 195).

Power to under-
takers' surveyor
to enter houses
to inspect, etc.

57. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [on producing, if required, evidence of his authority (a)], enter into any house or premises supplied with water by virtue of this or the special Act in order to examine if there be any waste or misuse of such water; and if [after production of his authority (a)] such surveyor or other person at any such time be refused admittance into such

dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises. Section 59.

(a) Neither of the phrases in square brackets occur in the section as enacted, but are to be read in where the section is incorporated with the P. H. A., 1936, by *ibid.*, s. 120 (see *ibid.*, s. 120, proviso (f), *ante*, p. 368).

58. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds (a). Penalty for allowing persons to use water supplied by undertakers.

(a) A covenant to repair or renew a pipe is broken if in consequence of the pipe becoming furred by encrustation the flow of water is substantially diminished although it is still sufficient for ordinary purposes. Where a railway company has obtained a supply of water by meter to a railway station, this does not authorise the use of such supply for another station. Knowledge of such wrongful use over a long period cannot be imputed to the principals supplying the water by reason of their agent having from time to time read a meter which happened to be side by side with the meter which measured the wrongful uses of the supply (*G. N. Ry. v. Bradford Corporation* (1918), 83 J. P. 33 ; 88 L. J. Ch. 101).

59. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit belonging to the undertakers, or any pipe leading to any such reservoir, watercourse, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds (a). Penalty for taking water belonging to undertakers without agreement.

(a) Section 59 is repealed by the S. L. R. A., 1875, to the same extent as s. 55, *ante* p. 4192. This section provides no penalty for taking water from an unoccupied house. See *Piercy v. Pope* (1881), 46 J. P. 102 ; 45 L. T. 477 ; 43 Digest 1095, 256. See also, with reference to this section, *Hildreth v. Adamson*, *ante*, p. 376, and *Burns v. Scholfield* (1922), 87 J. P. 54 ; 128 L. T. 382 ; 43 Digest 1096, 264. As to larceny of water, see *Ferens v. O'Brien*, *ante*, p. 380.

A section in a special Act provided that if any person should wilfully waste the water of the company, or apply it to any purpose other than that agreed upon, he should be liable to a penalty. It was held that this section did not apply to a case where water, after being used for ordinary domestic purposes, was conveyed into an apparatus for flushing a water-closet (*Evans v. Gornall* (1892), 8 T. L. R. 602).

60. Every person who shall wilfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds. Penalty for destroying valves, drawing off water, etc.

And with respect to the provisions for guarding against fouling the water of the undertakers, be it enacted as follows (a) : Fouling the water.

(a) See also the Waterworks Clauses Act, 1863, ss. 16–20, *post*, pp. 2267–9.

61. Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds ; (that is to say,) Penalties for causing the water of the undertakers to be fouled, etc.

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein any dog or other animal :

Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct, or other waterworks

Section 61.

as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing :

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled :

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last-mentioned offence shall be continued.

Penalty for permitting substances produced in making gas to flow into the streams or works of the undertakers.

62. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds; and such penalty shall be recovered, with full costs of suit, in any of the superior courts; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (*a*).

(*a*) See the Gasworks Clauses Act, 1847, s. 21, *ante*, p. 4170, and the note thereto; and the P. H. A., 1875, s. 68, *post*.

Daily penalty during the continuance of the offence.

63. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Penalty on gas makers causing water to be fouled.

64. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special Act, such person shall forfeit to the undertakers for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Power to open ground and examine gas pipes, to ascertain whether water is being fouled by gas.

65. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes, conduits, and works of the persons making or supplying gas: provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes (*a*).

(*a*) See also ss. 28—34, *ante*, pp. 4183—6.

66. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination. **Section 66.**
Expenses to abide the result of the examination.

67. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered. Recovery of expenses.

And with respect to the payment and recovery of the water rates (a), be it enacted as follows: Water rates.

(a) For purposes of incorporation with the P. H. A., 1936, these provisions are to have effect subject to ss. 126—131 of that Act (see *ibid.*, s. 120, proviso (g), *ante*, p. 369).

68. The water rates, except as hereinafter (a) and in the special Act mentioned, shall be paid by and be recoverable from the person requiring, receiving or using the supply of water, and shall be payable according to the annual value of the tenements (b) supplied with water, and if any dispute arise as to such value the same shall be determined by two justices (c). Rates to be recoverable from person supplied with water.

(a) See s. 72, *post*, p. 4199.

(b) See *Metropolitan Water Board v. Baker (G. P. & J.), Ltd.* (1910), 74 J. P. 337; 102 L. T. 536; 43 Digest 1103, 316; *Metropolitan Water Board v. Phillips*, [1913] A. C. 86; 77 J. P. 73; 38 Digest 636, 1548.

(c) Water rates under the P. H. A., 1936, s. 126, *ante*, p. 377, are to be assessed upon the net annual value appearing in the valuation list under the R. and V. Act, 1925, but if no such value appears therein (see the notes to s. 126 at p. 378) then that value is to be ascertained, in case of dispute, by a court of summary jurisdiction. Section 77 of the L. G. A. 1929, *post*, contains a general modification of the provisions of all Acts requiring the assessment of water rates upon a value shown in the valuation list.

In the application of these modifications the decisions upon the provisions in the text may be useful. They are, therefore, set out here.

By their local Act, 16 Vict. c. xxii., s. 79, the plaintiffs were bound to supply the houses within a certain district with water "at the following rate per annum, that is to say, where the rent" of such dwelling-houses should not amount to £7 per annum, at a rate not exceeding 6 per cent. per annum on such rent, but not exceeding 7s. 2d. per annum; and so on in a graduated scale. The defendant was owner of several small houses supplied with water by the plaintiffs, in respect of which he paid, either under statutory obligation or by voluntary agreement, the poor rate, water rate, and district rate. It was held that "rent" in s. 79 was equivalent to "annual value," and that in estimating the rent on which the water rate was payable, the defendant was entitled to deduct the water rates so paid by him (*Sheffield Waterworks Co. v. Bennett* (1872), L. R. 7 Ex. 409; 43 Digest 1088, 209).

By s. 56 of the New River Company's Act, 1852, which incorporates the Waterworks Clauses Act, 1847, it is enacted that "nothing in this Act or in any Act incorporated herewith contained shall prevent the company from recovering any sum of money not exceeding £50, which shall be due to them for water rates or rents, or for damages, costs or expenses, by action or proceeding in such manner as is by law provided for the recovery of debts not exceeding £50." It was held that where a bona fide dispute arises as to the annual value, the company must, before they can sue for the rate, obtain a decision of justices in that dispute under s. 68 of the Act of 1847, *supra* (*New River Co. v. Mather* (1875), L. R. 10 C. P. 442; 39 J. P. 614; 43 Digest 1092, 238).

By the special Act of a water company which incorporated the Waterworks Clauses Act, 1847, save so far as the clauses or provisions thereof were expressly varied or excepted, the company were obliged to supply water to the occupiers of dwelling houses for domestic purposes at a rate not exceeding £6 per cent. per annum upon the annual "rack-rent or

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value" of the premises supplied. It was further provided by a subsequent section of the Act that the rate should be "payable according to the annual value at which the premises were from time to time assessed to the poor rate if the same were so assessed, or, if not, according to the net annual value of the premises." It was held that the water rate charged by the company must be calculated on the "rateable value," not on the "gross estimated rental" of the premises supplied with water (*Warrington Waterworks Co. v. Longshaw* (1882), 9 Q. B. D. 145; 46 J. P. 773; 43 Digest 1089, 216).

It was provided by a local Act that the charge to be made for the supply of water for domestic use should be at a rate varying according to the "annual rent" of the premises supplied. The appellant was the owner of certain houses supplied with water by the respondents under the Act. The houses were let at weekly rents, the appellant paying all rates charged thereon, and also for all repairs and insurances in respect thereof. He was allowed as an owner, under the Poor Rate Assessment and Collection Act, 1869, s. 4, a reduction of 30 per cent. from the full amount of the poor rate which an occupier if rated would have paid. The respondents charged the appellant with water rates calculated on the following basis: They multiplied the weekly rents by fifty-two and deducted from the amount the actual sums paid by the appellant for rates and then charged the water rates upon the balance. It was held that in order to arrive at the "annual rent" upon which the water rate was to be computed, an allowance should be made in respect of "voids," i.e. houses lying vacant from time to time; and that the actual amount of the poor rates and other rates paid by the appellant was rightly deducted, but that the appellant was not entitled to deduct the full amount of the rates which an occupier if rated would have paid; nor the amount he paid for repairs and insurances (*Smith v. Birmingham Corporation* (1883), 11 Q. B. D. 195; 47 J. P. 645; 43 Digest 1088, 210; and see *Dobbs v. Grand Junction Waterworks Co.*, *infra*).

A water company by a special Act of 1826 was compellable to supply water to certain dwelling-houses in the metropolis for domestic purposes at certain rates per cent. per annum payable "according to the actual amount of the rent where the same can be ascertained, and where the same cannot be ascertained, according to the actual amount or annual value upon which the assessment to the poor's rate is computed in the parish or district where the house is situated." By a special Act of 1852, the company were compelled to furnish water "where the annual value of the dwelling-house or other place supplied shall not exceed £200 at a rate per cent. per annum on such value not exceeding £3." The occupier of one of the houses was lessee for a long term at a ground rent, and paid no rent except the ground rent:—*Held*, reversing the decision of the Court of Appeal, that whether the later Act repealed the provisions of the former Act or not the case must be dealt with under the later Act; and that the words "annual value" in the later Act meant "net annual value" as defined in the Parochial Assessments Act, 1836, s. 1:—*Held* also, that "annual value" had the same meaning in the earlier as in the later Act (*Dobbs v. Grand Junction Waterworks Co.* (1883), 9 App. Cas. 49; 48 J. P. 5; 43 Digest 1090, 219). See also *Northampton Corporation v. Ellen*, [1904] 1 K. B. 299; 68 J. P. 197; 43 Digest 1091, 227.

By the special Act of a water company it was provided that water should be supplied for domestic purposes by the company at a rate per cent. upon the annual value of the dwelling-house or other place supplied, that a supply of water for domestic purposes should not include a supply of water for, among other things, any trade or manufacture, or business requiring an extra supply of water, and that the company might furnish water for other than domestic purposes on such terms as might be agreed on between the company and the consumer. The company supplied water for domestic purposes to a house occupied as a licensed public house. The company contended that the annual value of the premises as a licensed public house should be taken as the basis of the water rate payable in respect of such supply, and that therefore the fact of the premises being licensed, and a premium which had been paid for the lease of the premises as a public house ought to be taken into consideration in fixing the value. The occupier contended that such water rate should be based upon the value of the premises for domestic purposes only. It was held that the contention of the company was correct (*West Middlesex Waterworks Co. v. Coleman* (1885), 14 Q. B. D. 529; 49 J. P. 341; 43 Digest 1090, 222).

Section 68 of the Bristol Waterworks Act, 1862, enacts that the company shall furnish to every occupier of a private dwelling-house within their limits a sufficient supply of water for the domestic use of such occupier, at certain annual rents or rates, according to the "annual rack-rent or value of the premises so supplied," such supply (by s. 71) not to include, amongst other things, a supply of water "for watering gardens by means of a tap, tube, pipe, or other such like apparatus." And s. 32 of the Bristol Waterworks Amendment Act, 1865, enacts that "if any dispute shall arise as to the amount of the annual rent or value of any dwelling-house or premises supplied with water by the company, such dispute shall be decided by two justices: provided that the amount of the annual rack-rent or value to be fixed by such justices shall not be less than the gross sum assessed to the poor rate or less than the sum actually paid for such dwelling-house or premises." A dwelling-

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house and garden in the occupation of the owner were assessed to the poor rate as follows : "Gross estimated rental £240"; "Rateable value, £204." It was proved that the value of the house without the garden would be 10 per cent. less, and that the owner contracted to pay, and did pay £1 1s. annually for the watering by means of a pipe and a tap in the garden which surrounded the dwelling-house, and was occupied and assessed therewith :—*Held*, by MATHEW and SMITH, JJ., upon a case stated by the justices that the words "gross sum assessed to the poor rate," meant the "gross estimated rental," and not "rateable or net value"; and that the water rent was chargeable upon the gross estimated rental of "the premises," including the pleasure garden occupied with the house, and not merely the dwelling-house itself, the extra charge for the garden supply being for using a pipe and a tap (*Bristol Waterworks Co. v. Uren* (1885), 15 Q. B. D. 637; 49 J. P. 564; 43 Digest 1089, 217). See *Grand Junction Waterworks Co. v. Davies*, *post*, p. 4198.

The owner of three cottages let them at weekly rents to separate tenants and paid all rates including water rates. By s. 32 of a special Act the water board were to supply water at the rates specified, that is to say, "where the annual rack-rent or value shall not exceed twenty pounds at a rate per cent. per annum not exceeding ten pounds." It was held that the owner was entitled to deduct the general district rate, the poor rate and the water rate from the gross rent of the cottages so as to arrive at the "annual rack-rent or value" on which the water rate was to be assessed (*Wilkinson v. Bury Water Board* (1905), 69 J. P. 214; 92 L. T. 417; 43 Digest 1089, 215).

Where a dispute had arisen as to the amount of the water rate payable by an occupier of premises to a water company (whose special Act incorporated the Waterworks Clauses Act, 1847), it was held that the determination of the annual value of the premises supplied, by two justices, under s. 68 of the Act of 1847, was a condition precedent to the right of the occupier to sue the company for cutting off the water, and for the amount alleged to have been paid in excess (*Whiting v. East London Waterworks Co.* (1884), Cab. & El. 331; 43 Digest 1095, 252).

A local waterworks Act empowered a company to distrain for water rates for an agreed amount. A later Act limited the rates to such sums as should be "reasonable." Under the Waterworks Clauses Act, 1847, which incorporates the Railways Clauses Consolidation Act, 1845, s. 140, water rates under £20 are to be recovered by means of a distress warrant issued by justices. A third Act of the company in 1852 incorporated the Waterworks Clauses Act, but expressly preserved the powers conferred by the former Acts. It was held that the right of the company to levy their own distress was kept alive by the saving clause in the Act of 1852, and that the distress by justices' warrant was additional to, and not in substitution for, the company's original remedy (*Richards v. West Middlesex Waterworks Co.* (1885), 15 Q. B. D. 660; 49 J. P. 631; 18 Digest 417, 1560).

Although the statutory remedy provided by s. 68 of the Waterworks Clauses Act, 1847, for the settlement by two justices of disputes as to the annual value of a tenement supplied by water, and the special remedy by penalties given by s. 43 against a company for withholding water, have not ousted the general jurisdiction to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to value, such injunction will not be granted on the application of an owner or occupier who will not undertake to commence proceedings with due speed before the justices under s. 68 (*Hayward v. East London Waterworks Co.* (1884), 28 Ch. D. 138; 49 J. P. 452; 43 Digest 1094, 251).

Upon the hearing of a summons to enforce payment of a water rate, the justices have power under the above section to determine a dispute as to the annual value of the premises rated. It is not necessary to their jurisdiction before making an order for payment of the rate upon such summons that the dispute should have been previously determined in a separate proceeding before justices (*Lea v. Abergavenny Improvement Commissioners* (1885), 16 Q. B. D. 18; 50 J. P. 165; 43 Digest 1094, 244).

Where water rates had been paid for a number of years without objection it was held that the excess which had been charged in respect of an annual value beyond that prescribed in the section could not be recovered back (*Henderson v. Folkestone Waterworks Co.* (1885), 1 T. L. R. 329; 35 Digest 159, 552; cf. *Meadows v. Grand Junction Waterworks Co.*, *post*, p. 4198).

So where water rate had been paid on gross value instead of net value in ignorance of the fact that the former was a wrong basis, it was held that the excess could not be recovered (*Slater v. Burnley Corporation* (1888), 53 J. P. 70; 43 Digest 1093, 240). And see *Slater v. Burnley Corporation* (No. 2) (1889), 53 J. P. 535; 35 Digest 159, 554. And see *Stanley Brothers, Ltd. v. Nuneaton Corporation* (1913), 77 J. P. 349; 108 L. T. 986; 35 Digest 152, 496.

Where a water company were authorised by their special Act to charge at agreed rates for water supplied for purposes other than domestic, it was held that they were not by implication prohibited from entering into agreements for the supply of water for domestic purposes at agreed rates (*Southwark and Vauxhall Water Co. v. Dickenson* (1889), 5 T. L. R. 251).

The Barnett Gas and Water Act, 1872 (with which is incorporated the Waterworks
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Clauses Act, 1847), provides (*inter alia*): "Section 56. The company . . . shall furnish . . . a sufficient supply of water . . . at any rate, on the actual rack-rental of the house or part of a house or premises supplied if the same be let at rack-rent, and on the annual value if, and while, the same is not let at rack-rent, not exceeding" (so much):—*Held*, that "the annual rack-rent" means the same as "the annual value," and does not mean "net annual value" (*Stevens v. Barnet Gas and Water Co.* (1888), 57 L. J. M. C. 82; 52 J. P. Jo. 276; 43 Digest 1089, 211).

By 1 & 2 Geo. 4, c. cxiv., s. 8, the churchwardens of a parish were required to make a rate "on the full annual rent or value" of all houses rateable to the relief of the poor:—*Held*, that the full annual rent or value meant the full annual net value and that the rate could not be made on the gross estimated rental (*Rose v. Watson*, [1894] 2 Q. B. 90; 58 J. P. 589; 19 Digest 522, 3838).

In determining the annual value of a residential tenement under s. 68 of the Waterworks Clauses Act, 1847, for the purposes of water supply to the dwelling-house for domestic purposes only, it is not competent to justices to exclude a portion of the garden occupied and enjoyed with the dwelling-house. The section contemplates the valuation of the existing tenement as the owner and occupier choose to enjoy it (*Grand Junction Waterworks Co. v. Davies*, [1897] 2 Q. B. 209; 61 J. P. 484; 43 Digest 1090, 223).

If a statute which authorises a water company to charge its consumers with a water rate is ambiguous with regard to the amount of the rate to be charged or the mode of assessing it, it must be construed in favour of the consumer and against the company (*South Staffordshire Waterworks Co. v. Barrow* (1897), 61 J. P. 661; 43 Digest 1090, 224). But where a section of the special Act provided that the company should supply water at the yearly rates specified, namely, where the gross estimated rental of the premises should not exceed a certain amount, at a rate per cent. on the amount specified, it was held that the provision varied that in the text and that the rate must be calculated on the gross estimated rental (*Woking Water and Gas Co. v. Parker*, [1916] 1 K. B. 473; 80 J. P. 188; 43 Digest 1090, 218).

Where an owner was entitled by statute to a supply at a reduced rate by reason of his house standing on a particular estate, but he had for many years paid the full rate in ignorance that his house stood on that estate, he was held entitled to recover back the over-payments (*Meadows v. Grand Junction Waterworks Co.* (1905), 69 J. P. 255; 21 T. L. R. 538; 35 Digest 151, 484).

A water company, before the Education Act, 1902, came into operation supplied water by meter to the managers of a voluntary public elementary school for the non-domestic purposes of the school buildings, and continued to supply them after the Act of 1902 came into force. There was no written contract. The company continued, as they had done before the Act, to send the demand note for payment for the water supplied to the managers, who included the charges in their quarterly accounts of expenditure sent by them to the local education authority who paid the amount direct to the company. The company sent the receipts to the local education authority. The local education authority having made default in the payments, the company brought an action against them for water supplied. It was held by the Divisional Court that the local education authority had power to enter into a contract for the supply of water necessary for the maintenance of the school, and that there was evidence upon which the county court judge might properly find that they had in fact entered into such a contract with the company (*Troubridge Water Co. v. Wilts C. C.*, [1909] 1 K. B. 824; 73 J. P. 280; 19 Digest 559, 30). See also *Northern Theatres Co. v. Shillito*, [1925] 2 K. B. 100; 89 J. P. 101; 43 Digest 1079, 140, and the cases of *Metropolitan Water Board v. Baker (G. P. & J.), Ltd.* (1910), 74 J. P. 337; 102 L. T. 536; 43 Digest 1103, 316, and *Metropolitan Water Board v. Phillips*, [1913] A. C. 86; 77 J. P. 73; 38 Digest 636, 1548, decided under the Metropolitan Water Board (Charges) Act, 1907, s. 8.

Where several houses are supplied by one pipe, each shall pay as if separately supplied.

69. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

Rates to be paid quarterly in advance.

70. The rates shall be paid in advance (a) by equal quarterly payments in England . . . at Christmas Day, Lady Day, Midsummer Day, and Michaelmas Day, . . . and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made (b).

(a) Therefore no demand is necessary before proceedings for recovery (*East London Waterworks Co. v. Kyffin*, [1895] 1 Q. B. 55; 59 J. P. 405; 43 Digest 1094, 245). But see, *per* ALVERSTONE, L.C.J., in *Elliott v. Russell*, [1902] 2 K. B. 748, at p. 754; 67 J. P. 158, at p. 159; 43 Digest 1065, 52. See also notes to s. 74, *post*, p. 4200.

Note to
Section 70.

(b) Words relating to Scotland and Ireland only are omitted from this section.

71. The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Parties giving notice to discontinue use of water, or removing, to pay to the next quarter day.

72. The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements (a); and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement (b).

Owners of houses not exceeding £10 rent to be liable to water rates.

(a) The respondents, relying on s. 58 of their private Act (15 & 16 Vict. c. clviii.), which extended the provisions of s. 72 of the Waterworks Clauses Act, 1847, to houses not exceeding the annual value of £20, claimed water rates from the appellants, as owners of certain houses under the annual value of £20 each, for two quarters, during the whole of which time such houses were unoccupied:—*Held*, that an owner's liability for rates under s. 72 of the Waterworks Clauses Act, 1847, ceases on the quarterly day of payment next after the house has become unoccupied, and that as s. 58 of the respondents' private Act merely extended the provisions of that section to houses not exceeding the annual value of £20, the respondents were not entitled to recover (*British Empire Mutual Life Assurance Co. v. Southpark and Vauxhall Water Co.* (1888), 52 J. P. 758; 59 L. T. 321; 43 Digest 1087, 205). When a house is unoccupied at the beginning of a quarter, and becomes occupied in the course of that quarter, the water rate is payable only for that portion of the quarter during which the house is occupied, although the company had no notice of the non-occupation, and continued to supply water (*East London Waterworks Co. v. Foulkes*, [1894] 1 Q. B. 819; 58 J. P. 384; 43 Digest 1087, 206). Where upon adjudication the trustee in bankruptcy takes possession of the debtor's premises, and carries on therein the business with a view to selling it as a going concern, he is in the position of an "incoming tenant" within s. 48 of the Metropolitan Water Act, 1871, and is not liable for arrears of water rate left unpaid by the debtor; and if he has paid such arrears under protest he is entitled to recover them back (*Re Flack, Ex parte Berry*, [1910] 2 Q. B. 32; 4 Digest 206, 1899).

It is sufficient to prove that the rateable value as settled by the local authority does not exceed the maximum sum under which the owner is liable (*Metropolitan Water Board v. Streeton* (1910), 74 J. P. 180; 102 L. T. 220; 43 Digest 1103, 315).

(b) Where the premises were mortgaged and a receiver was appointed, the mortgagee appointed another person to collect the rents. The collector handed over the rents intact, at first to the mortgagee and subsequently to the receiver. It was held that the collector and not the receiver was the person liable under a section of a special Act substantially identical with the text, to pay the water rate (*Metropolitan Water Board v. Brooks*, [1911] 1 K. B. 289; 75 J. P. 41; 43 Digest 1087, 207).

73. Provided always, that when any owner shall pay any such rate in respect of any such dwelling-house or part of a dwelling-house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house (a); and every such sum of money payable by the tenant to the owner, under the provision hereinbefore con-

Sums paid by owner recoverable as rent from tenant.

Section 78. tained, may be recovered, if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

(a) Under a covenant by a lessor to pay all water rates imposed or assessed upon the premises, or on the lessor or lessee in respect thereof, the lessor is not bound to pay for water supplied to the lessee for trade purposes (*Re Floyd, Floyd v. Lyons (J.) & Co.*, [1897] 1 Ch. 633; 31 Digest 297, 4417). But under a covenant to pay all rates and taxes payable in respect of the demised premises a lessor is bound to pay water rate for water supplied for domestic purposes (*Bourne and Tant v. Salmon and Gluckstein, Ltd.*, [1907] 1 Ch. 616; 71 J. P. 329; 31 Digest 295, 4404; *Drieselman v. Winstanley* (1909), 53 Sol. Jo. 631; 31 Digest 295, 4405).

If rates are not paid, water may be cut off, and rates and expenses recovered.

74. If any person supplied with water by the undertakers, or liable (a) as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water, and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action in any court of competent jurisdiction (b).

(a) *I.e.*, liable at the time the water rate became due. Provided that there was at that date an occupier other than the owner and that the owner and not the occupier was liable for the payment of the rate, s. 4 of the Water Companies (Regulation of Powers) Act, 1887, *post*, p. 4697, prohibits the water company from cutting off the supply for non-payment of the rate even after the occupier has given up possession and the premises have become vacant (*Metropolitan Water Board v. Bibbey*, [1911] 2 K. B. 74; 75 J. P. 322; 43 Digest 1095, 254).

(b) See also Waterworks Clauses Act, 1863, s. 21, *post*, p. 4261. See *Sheffield Waterworks Co. v. Wilkinson*, *ante*, p. 4191. With reference to the particular mode of recovering the rates here prescribed, it may be stated that damages not specially provided for are by s. 85 recoverable under the sections of the Railways Clauses Act, 1845, *ante*, p. 4156. In such case the claim of a water company for arrears of rates is a complaint within s. 11 of the S. J. A., 1848, and the summons must be issued within six months from the date when the rate was due and demanded (*East London Waterworks Co. v. Charles*, [1894] 2 Q. B. 730; 58 J. P. 764; 43 Digest 1094, 247; see, *per* WILLS, J., in *Elliot v. Russell*, [1902] 2 K. B. 748, at p. 755; 67 J. P. 158, at p. 160; 43 Digest 1065, 52). The limitation of six months imposed in respect of summary proceedings does not apply to proceedings in the county court when both remedies are open to the company (*Metropolitan Water Board v. Bunn*, [1913] 3 K. B. 181; 77 J. P. 353; 43 Digest 1093, 243). The rates being payable quarterly in advance no demand is necessary (*East London Waterworks Co. v. Kyffin*, *ante*, p. 4199; but see, *per* ALVERSTONE, L.C.J., in *Elliot v. Russell*, [1902] 2 K. B. 748, at 754; 67 J. P. 158, at p. 159; 43 Digest 1065, 52).

See, as to the right to cut off the water when the rates are payable by the owner, the Water Companies (Regulation of Powers) Act, 1887, s. 4, and the notes thereto, *post*, p. 4698. It is not a condition precedent to the right to recover the rate that the power of cutting off the water should first have been exercised (*R. v. Hutton*, [1907] 2 K. B. 578; 71 J. P. 424; 43 Digest 1093, 247).

As to the discretion of the justices in respect of costs, see *Ruabon Water Co. v. Evans* (1906), 22 T. L. R. 541; 43 Digest 1094, 248.

* * * * *

THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

(10 & 11 VICT. c. 34) (a).

An Act for consolidating in one Act certain Provisions usually contained in Acts for Paving, Draining, Cleansing, Lighting, and Improving Towns.

[21st June, 1847.]

Incorporation
of this Act

[1.] This Act shall extend only to such towns or districts in England or Ireland as shall be comprised in any Act of Parliament hereafter to be passed

which shall declare that this Act shall be incorporated therewith ; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Section 1.

with special Act.

(a) Sections 64—74, 79—83 are incorporated, in urban districts only, by the P. H. A., 1875, s. 160, *post*. As to ss. 75—78, see *post*, p. 4207.

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows :

Interpretation.

2. The expression “the special Act” used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district, or of any class of towns or districts, defined or comprised therein, and with which this Act shall be incorporated ; and the word “prescribed” used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word “prescribed” the expression “prescribed for that purpose in the special Act” had been used ; and the expression “the commissioners” shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers of executing the purposes thereof.

“The special Act.”

“Prescribed.”

“The commissioners.”

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; (that is to say,)

Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number :

Number.

Words importing the masculine gender shall include females :

Gender.

The word “person” shall include a corporation, whether aggregate or sole :

“Person.”

The word “lands” shall include messuages, lands, tenements, and hereditaments, of any tenure :

“Lands.”

The word “street” shall extend to and include any road, square, court, alley, and thoroughfare, within the limits of the special Act :

“Street.”

The word “month” shall mean calendar month :

“Month.”

The expression “superior courts” shall mean her Majesty’s superior courts of record at Westminster . . .

“Superior courts.”

The word “oath” shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :

“Oath.”

The word “county” shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town :

“County.”

The word “justice” shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises ; and where any matter is authorised or required to be done by two justices, the expression “two justices” shall be understood to mean two or more justices met and acting together :

“Justice”

“Two justices.”

- Section 3.** The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined shall mean the court of general or quarter sessions of the peace which shall be held in or at the place nearest to the district in which the matter arises requiring the cognizance of any such court, and having jurisdiction over such district :
- "Quarter sessions."**
- "Owner."** The word "owner" used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rack-rent, would be entitled to receive, the rack-rent from the occupier thereof :
- "Cattle."** The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.
- Citing the Act.** And with respect to citing this Act or any part thereof, be it enacted as follows :
- Short title of this Act.** 4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Towns Improvement Clauses Act, 1847."
- Form in which portions of this Act may be incorporated with other Acts.** 5. For the purposes of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.
- * * * * *
- Naming streets.** And with respect to naming the streets and numbering the houses, be it enacted as follows (a) :
- (a) These clauses are incorporated, in urban districts only, with the P. H. A., 1875, by s. 160, *post*. See also notes to that section. Where s. 19 of the P. H. A., 1926, Vol. V., *post*, has been adopted the incorporation of these clauses by s. 160 of the P. H. A., 1875, ceases to have effect in so far as it relates to the naming of the streets (s. 19 (3), P. H. A., 1925). The provisions with respect to the numbering of houses still remain operative.
- Houses to be numbered and streets named.** 64. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place, at or near each end, corner, or entrance of every such street, the name by which such street is to be known (a); and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty not exceeding forty shillings for every such offence (b).
- (a) This gives the local authority no power to change the names of streets, and if the proposed change is likely to be injurious to the owners or occupiers of houses in the street, the local authority may be restrained from making it (*Anderson v. Dublin Corporation* (1884), 15 L. R. Ir. 510). But although the local authority have approved of plans for a new street, giving it a name, they may afterwards, when the street is actually laid out, give it another name (*Collins v. Hornsey U. C.*, [1901] 2 K. B. 180; 65 J. P. 600; 26 Digest 567, 2604). See also on the subject of altering the names of streets, s. 21 of the P. H. A., 1907, *post*, and s. 18 of the P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1120, which when adopted supersedes s. 21 of the 1907 Act.
- It is not a violation of any legal right of the owner of a house for the owner of another house to call it by the same name. There is no legal right to the exclusive use of any

particular name for a particular house (*Day v. Brownrigg* (1879), 10 Ch. D. 294; 28 Digest 485, 899).

(b) As to the recovery of this penalty, see s. 316 of the P. H. A., 1875, which is not repealed so far as material for the purposes of the P. H. A., 1875, or any Act directed to be construed therewith (see *ante*, p. 729). The numbers must be provided at the expense of the occupiers, and there is no distinct legal authority for charging them to the rates.

**Note to
Section 64.**

65. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty not exceeding forty shillings, and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages (a).

Numbers of
houses to be
renewed by
occupiers.

(a) See note (b), s. 64, *supra*.

And with respect to improving the line of the streets, and removing obstructions, be it enacted as follows (a):

Improving
streets.

(a) These clauses are incorporated, in urban districts only, with the P. H. A., 1875, by s. 160, *post*. See also notes to that section. See also the P. H. (Buildings in Streets) A., 1888, *post*, the P. H. A., 1925, s. 33, Vol. V., *post*, and the Roads Improvement Act, 1925, s. 5, Vol. V., *post*.

66. The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street in which such building, or any building adjacent thereto, is situated (a).

Houses may be
set forward for
improving line
of street.

(a) The word *street* is here used in its popular acceptance of a line of buildings, and does not include a highway generally. This section gives no power to divert a highway, not being a street; that can only be done under the Highway Acts (*R. v. Platts* (1880), 44 J. P. 765; 49 L. J. Q. B. 848 26 Digest 519, 2206); or under Inclosure Acts, as in *Hornby v. Sylvestor* (1888), 20 Q. B. D. 797; 52 J. P. 468; or by an improvement or reconstruction scheme under the Housing Act, 1936, ss. 34 *et seq.*, *ante*, pp. 1641 *et seq.* See also s. 155 of the P. H. A., 1875, *post*, and note thereto.

67. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall resell any parts of the land so purchased which shall not be wanted for the enlargement of the street (a).

Commissioners
may purchase
lands for widen-
ing streets, etc.
and sell the
parts not
wanted.

(a) A similar power is conferred upon urban authorities by s. 154 of the P. H. A., 1875, *post*, as interpreted by s. 83 of the P. H. A., 1925, Vol. V., *post*. See also L. G. A., 1933, s. 165, *ante*, p. 993, as to the disposal of surplus lands.

68. When any house or building, any part of which projects beyond the regular line of the street (a), or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or towards the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains (b).

Houses project-
ing beyond
line of street,
when taken
down, to be
set back.

(a) This does not mean a strict mathematical line, but a substantially regular line (*Tear (or Fear or Sear) v. Freebody* (1858), 4 C. B. N. S. 228; 22 J. P. 707; 26 Digest 501, 2086). No general line of buildings may exist in some cases. See *Ecclesiastical Commissioners v. St. James, Clerkenwell Vestry* (1861), 25 J. P. 580; 7 Jur. (N.S.) 326; 26 Digest 501, 2088. *Tear (or Fear or Sear) v. Freebody* was explained by WILLES, J., in *Simpson v. Smith*, *post*, p. 4204, and see *Lord Manners v. Johnson* (1875), 1 Ch. D. 673; 40 J. P. 345; 40 Digest

**Note to
Section 68.**

320, 2717. When houses project and are pulled down, and the land sold for building purposes, new houses may be built on the same line as before, unless compensation be given. In determining the general line, therefore, regard ought to be had to the frontage of houses previously existing, and which may be rebuilt, as well as those still standing (*Lord Auckland v. Westminster District Board of Works* (1872), 7 Ch. App. 597; 26 Digest 501, 2087).

As to the right of an adjoining owner to sue in respect of a building erected contrary to this section, see *Brooks v. Terry* (1888), 4 T. L. R. 678; 26 Digest 513, 2178.

As to the determination of the general line of buildings in the metropolis, see *St. George, Hanover Square Vestry v. Sparrow* (1864), 16 C. B. (N.S.) 209; 26 Digest 504, 2110; *Bauman v. St. Pancras Vestry* (1867), L. R. 2 Q. B. 528; 31 J. P. 676; 26 Digest 504, 2111; *Wandsworth Board of Works v. Hall* (1868), L. R. 4 C. P. 85; 33 J. P. 183; 26 Digest 507, 2128; *Simpson v. Smith* (1871), L. R. 6 C. P. 87; 35 J. P. 310; 26 Digest 504, 2112; *Lord Auckland v. Westminster Board of Works*, *supra*; *Paddington Vestry v. Snow* (1881), 46 J. P. 87; 45 L. T. 475; 26 Digest 507, 2129; *Barlow v. St. Mary Abbots, Kensington Vestry* (1886), 11 App. Cas. 257; 50 J. P. 691; 26 Digest 505, 2116; *Spackman v. Plumstead Board of Works* (1885), 10 App. Cas. 229; 49 J. P. 420; 26 Digest 505, 2113; *St. Mary, Islington Vestry v. Goodman* (1889), 23 Q. B. D. 154; 54 J. P. 52; 26 Digest 513, 2172; *Fortescue v. St. Matthew, Bethnal Green, Vestry*, [1891] 2 Q. B. 170; 55 J. P. 758; 26 Digest 513, 2173; *London C. C. v. Cross* (1892), 66 L. T. 731; 26 Digest 509, 2139; *Allen v. London C. C.*, [1895] 2 Q. B. 587; 59 J. P. 644; 26 Digest 506, 2118; *Lavy v. London C. C.*, [1895] 2 Q. B. 577; 59 J. P. 630; 26 Digest 503, 2102; *London C. C. v. Pryor*, [1896] 1 Q. B. 465; 60 J. P. 292; 26 Digest 502, 2096; *S. E. & C. Rail. Co. v. London C. C.*, [1907] 2 K. B. 91; 71 J. P. 260; 26 Digest 507, 2125; *London C. C. v. Metropolitan Rail. Co.* (1907), 71 J. P. 372; 26 Digest 507, 2124; *Re Lilley and Skinner* (1907), 71 J. P. 437; *Scott v. Carritt* (1900), 82 L. T. 67; 26 Digest 502, 2097; *Lilley v. London C. C.*, [1910] A. C. 1; 73 J. P. 297; 26 Digest 507, 2126; *Rea v. London C. C.*, [1911] 1 K. B. 740; 75 J. P. 261; 26 Digest 510, 2152; *Fleming v. London C. C.*, [1909] 1 K. B. 116; 72 J. P. 519, reversed *sub nom. London C. C. v. Metropolitan Rail. Co.*, [1909] 2 K. B. 317; 73 J. P. 339; affirmed *sub nom. Fleming v. London C. C.*, [1911] A. C. 1; 75 J. P. 9; 26 Digest 505, 2114; *London C. C. v. Coal Co-operative Society, Ltd.* (1907), 72 J. P. 68; 26 Digest 508, 2135; *A. & F. Pears, Ltd. v. London C. C.* (1911), 75 J. P. 461; 26 Digest 504, 2108; *London C. C. v. Clode*, [1915] A. C. 947; 80 J. P. 1; 26 Digest 505, 2115; *London C. C. v. Galsworthy*, [1918] A. C. 851; 82 J. P. 297; 26 Digest 506, 2121; *London C. C. v. Metropolitan Rail. Co.*, [1919] 1 K. B. 283; 83 J. P. 105; 26 Digest 506, 2122.

(b) See also the P. H. A., 1875, s. 155, *post*, and the notes thereto.

Future projections of houses, etc. to be removed on notice.

69. The commissioners may give notice to the occupier (a) of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence, or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction to the safe and convenient passage along any street; and such occupier shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner of the house or building (b).

(a) Or owner. See the P. H. A., 1875, s. 160, *post*.

The local authority are not obliged to give notice to the owner or occupier before passing a resolution to send him notice to remove a projection, but if he objects to their order, his proper course is to apply to the local authority to be heard and lay his objections before them (*Att.-Gen. v. Hooper*, [1893] 3 Ch. 483; 57 J. P. 564; 26 Digest 566, 2597).

(b) Any projection erected or placed against or in front of any house or building which by reason of being insecurely fixed or of defective construction or otherwise is a source of danger to persons lawfully using a street in an urban district, where s. 24 of the P. H. A., 1925, has been adopted, is to be deemed to be an obstruction to the safe and convenient passage along the street for the purposes of this and the next section (s. 24, P. H. A., 1925,

Note to
Section 69.

Vol. V., *post*). As to area railings, see *Bouverie v. Miles* (1830), 1 B. & Ad. 38; 26 Digest 513, 2171; *Barker v. Herbert*, *infra*; as to a projecting shop front, see *R. v. Ingham* (1852), 17 Q. B. 884. As to a projecting porch, see *Gordon v. St. Mary Abbot's, Kensington Vestry*, [1894] 2 Q. B. 742; *Coburg Hotel Co. v. London C. C.* (1899), 63 J. P. 805; 81 L. T. 450; 26 Digest 503, 2103; as to a show-case on the footway, *Openshaw v. Pickering* (1912), 77 J. P. 27; 26 Digest 296, 278. A corresponding section of the Metropolis Management Act, 1855, was held not to justify the removal of a shed and seats erected by a publican upon a piece of ground between the footway and the roadway, the intervening space being found not to be part of the street, and the shed and seats not being against or in front of any house (*Le Neve v. Mile End Old Town Vestry* (1858), 8 E. & B. 1054; 22 J. P. 657; 26 Digest 443, 1594). And see *Hoare & Co., Ltd. v. Lewisham Corpn.* (1902), 67 J. P. 20; 87 L. T. 464; 26 Digest 310, 429. A shopkeeper placed goods on the pavement in front of his shop for sale, and was summoned under s. 28 of the Towns Police Clauses Act, 1847. He contended that he bona fide claimed the right to put the goods there, and the justices considered that their jurisdiction was ousted, but stated a case:—*Held*, that the justices ought to determine whether the land on which the goods were placed was part of the highway or not; and that unless the defendant established a restricted dedication no question as to a claim of right arose (*Leicester Urban Sanitary Authority v. Holland* (1888), 52 J. P. 788; 57 L. J. M. C. 75; 26 Digest 308, 398). Where a question arises as to whether the portion of the highway obstructed had ever been dedicated, the justices must determine this point and their jurisdiction is not ousted (*Williams v. Depiford U. D. C.* (1924), 41 T. L. R. 47; Digest Supp.). As to proof of dedication of embayments adjoining the foot pavement, see *Piggott v. Goldstraw* (1901), 65 J. P. 259; 26 Digest 299, 304. As to a dedication of a street subject to existing obstructions or projections, see *Fisher v. Prowse*, *Cooper v. Walker* (1862), 2 B. & S. 770; 26 J. P. 613; 26 Digest 265, 66, where such dedication was held to be an answer in actions for accidents caused by cellar flaps and projecting doorsteps. And see *Brackley v. Midland Rail. Co.* (1916), 80 J. P. 369; 85 L. J. K. B. 1596; 26 Digest 302, 333. It is a good defence that the footway was dedicated to the public subject to the right of the defendant to commit the acts of obstruction complained of, and such defence if raised bona fide ousts the jurisdiction of the justices. The evidence, however, to establish such a defence should be of a cogent character (*R. v. Londonderry J.J.*, [1902] 2 L. R. 266; 26 Digest 440, b). And see *R. (Kennedy) v. Cork County J.J.* (1911), 45 Ir. L. T. 217. There may be a dedication subject to the right to erect and maintain gates (*Ath.-Gen. v. Meyrick* (1915), 70 J. P. 515; 26 Digest 304, 357). As to projections existing before the passing of the local Act, see *Wilson v. Cunliffe* (1874), 38 J. P. 231; 29 L. T. 913; 26 Digest 565, 2593; *Whittaker v. Rhodes* (1881), 46 J. P. 182; 26 Digest 443, 1598. As to the liability of the occupier for accidents caused by projections, see *Tarry v. Ashton* (1876), 1 Q. B. D. 314; 40 J. P. 439; 26 Digest 433, 1519; *Watson v. Ellis* (1885), 1 T. L. R. 317; 26 Digest 419, 1379, where the plaintiff tripped over a carpet laid across a pavement to a carriage; *De Tyron v. Waring* (1884), 1 T. L. R. 414; *Hoare v. Kearley* (1885), 1 T. L. R. 426; 26 Digest 441, 1576; *Strute v. Southwark and Vauxhall Water Co.* (1889), 53 J. P. 424; 5 T. L. R. 638, where the plaintiff fell in consequence of having put his staff into a stop-cock box negligently left uncovered in the road; *Braithwaite v. Watson* (1889), 5 T. L. R. 331, where the plaintiff was injured by reason of a coal-cellar plate in the pavement being insecurely fastened; *Stiefsohn v. Brooke* (1889), 53 J. P. 790; 5 T. L. R. 684; 36 Digest 50, 310, where the plaintiff was injured by a lift inside an aperture adjoining the highway; *Barker v. Herbert*, [1911] 2 K. B. 633; 75 J. P. 481; 36 Digest 197, 374, where a child was injured when climbing on defective railings. As to overhead wires, see *Wandsworth Board of Works v. United Telephone Co.* (1884), 13 Q. B. D. 904; 48 J. P. 676; 26 Digest 328, 607.

It will be for the magistrate to decide whether the thing complained of is an obstruction to the passage. See *Gabriel v. St. James's, Westminster Vestry* (1859), 23 J. P. N. 372; 26 Digest 513, 2174, where the court intimated that this could be decided without calling a person to prove he had been actually obstructed. This was also decided in *Read v. Perrett* (1876), 1 Ex. D. 349; 41 J. P. 135; 26 Digest 513, 2175. But see *Hill v. Somerset* (1887), 51 J. P. 742; 26 Digest 436, 1538. A projection consisting of an oriel window, the lowest part of which is fifteen feet above the pavement, is not an obstruction. See *Goldstraw v. Duckworth* (1880), 5 Q. B. D. 275; 44 J. P. 410; 26 Digest 565, 2594. In the Scotch case of *McMillan v. Bennett* (1895), 22 R. (Ct. of Sess.) 23, the appellant, a bill poster, was convicted under s. 381 of the Burgh Police (Scotland) Act, 1892, for affixing a projecting advertising board to a building without the consent of the burgh commissioners. The building in question was the back wall of a workshop, on which the appellant fixed a board or wooden lining on which to post his bills, that board being about 102 feet long, 7 feet 6 inches high, and (taking into account the straps to which the board was affixed) it projected from the wall to the extent of 1½ inches. Section 159 of the Act was in much the same terms as this section:—*Held*, following *Goldstraw v. Duckworth*, *supra*, that it was not a projecting advertising board in the sense of the statute, which was intended to strike only at such projections as constituted an obstruction to the

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free passage of the street. See also *Hull v. London C. C.*, [1901] 1 K. B. 580; 65 J. P. 309; 26 Digest 503, 2105; *Winsborrow v. London Joint Stock Bank, Ltd.* (1903), 67 J. P. 289; 88 L. T. 803; 26 Digest 424, 1438; *London C. C. v. Illuminated Advertisements Co.*, [1904] 2 K. B. 886; 68 J. P. 445; 26 Digest 503, 2106; *London C. C. v. Scheuzik*, [1905] 2 K. B. 695; 69 J. P. 409; 26 Digest 503, 2104; *London C. C. v. Hancock and James*, [1907] 2 K. B. 45; 71 J. P. 268; 26 Digest 502, 2099; *R. v. Denman* (1907), 71 J. P. 279; 96 L. T. 672; 26 Digest 504, 2107.

Apart from statute there may be a legal easement to have a projection such as a sign-board affixed to the wall of an adjoining house. See *Moody v. Steggles* (1879), 12 Ch. D. 261; 19 Digest 66, 381.

Commissioners may cause existing projections to be removed, on giving notice and making compensation.

70. If any such obstructions or projections were erected or placed against or in front of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed or altered as they think fit (a); provided that they give notice of such intended removal or alteration to the occupier (b) of the house or building against or in front of which such obstruction or projection shall be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

(a) See *Bagshaw v. Buxton L. B. of Health* (1875), 1 Ch. D. 220; 40 J. P. 197; 26 Digest 565, 2596.

(b) *Or owner.* See the P. H. A., 1875, s. 160, *post*. As to the liability of the owner of the premises and of the local authority for injuries caused by a gate opening outwards, see *Evans v. Edinburgh Corporation*, [1916] 2 A. C. 45; 26 Digest 566, n.

Doors, etc. in future not to be made to open outwards, except when so allowed in case of public buildings.

71. All doors, gates, and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier (a) of such house, building, yard, or land shall, within eight days after notice from the commissioners to that effect, cause the same to be altered so as not to open outwards; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier (a), and shall be recoverable from him as damages (b), and he shall, in addition, be liable to a penalty not exceeding forty shillings.

(a) See note (b) to s. 70, *supra*.

(b) See the P. H. A., 1875, s. 160, *post*, as to the recovery of these costs from the owner, and the deduction of them from the rent, as in the case of private improvement rates.

Existing doors, etc. opening outwards may be altered.

72. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Coverings for cellar doors to be made by occupiers.

73. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance to any vault or cellar, a door or covering shall be made by the occupier (a) of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

(a) See note (b) to s. 70, *supra*.

74. The occupier (a) of every house or building in, adjoining, or near to any street shall, within seven days next after service of an order of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the foot-path; and in default of compliance with any such order within the period aforesaid, such occupier shall be liable to a penalty not exceeding forty shillings for every day that he shall so make default (b).

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Water spouts to be affixed to houses or buildings.

(a) Or owner. See the P. H. A., 1875, s. 160, *post*.

(b) Further powers, which are in addition to those conferred by this section, may be obtained by the adoption of s. 21 of the P. H. A., 1925, Vol. V., *post*.

And with respect to ruinous or dangerous buildings (a), be it enacted as follows:

Ruinous or dangerous buildings.

(a) Ss. 75—78, relating to ruinous or dangerous buildings, were incorporated into the P. H. A., 1875, by s. 160 (3). That paragraph was repealed by the P. H. A., 1936, s. 346 (1), Sched. III, Pt. I (1), *ante*, p. 728, except in so far as the enactments incorporated thereby relate to buildings or other things which are dangerous to passengers, and the sections must now be read with that limitation; see now s. 58, P. H. A., 1936, *ante*, p. 181.

As to fencing lands adjoining streets, which lands are, owing to the absence or inadequate repair of fences, a source of danger to passengers, see ss. 30 and 31 of the P. H. A., 1907, *post*. And as to the securing of dangerous ground or cliffs under a local Act, see *Gaby v. Palmer* (1916), 80 J. P. 212; 85 L. J. K. B. 1240; 38 Digest 209, 436.

75. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state, and dangerous to passengers (a) or to the occupiers of the neighbouring buildings, such surveyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers (b), and shall cause notice in writing to be given to the owner (c) of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing, as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices (d), and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state (e), within the time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured, in such manner as shall be requisite; and all the expenses (f) of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

Ruinous or dangerous buildings to be taken down or secured by owners, etc.

**Note to
Section 75.**

(a) The similar provisions of s. 73 of the Metropolitan Building Act, 1855, applied to any dangerous structure, notwithstanding that it did not adjoin a public highway (*London C. C. v. Herring*, [1894] 2 Q. B. 522; 58 J. P. 721; 34 Digest 591, 112). That decision was followed in relation to a structure outside the metropolis, in *Mellor v. Warden* (1896), 40 Sol. J. 567. The liability of an owner is not affected by the fact that the London County Council has temporarily shored up the building in pursuance of the London Building Act, 1894, s. 106. In order that a house may be dangerous within the meaning of ss. 103, 106 and 107 (1) of that Act, it is not necessary that it should be dangerous to inmates or to the public passing along the highway. It is sufficient if there is an apprehension of danger or injury to adjoining houses or to their inhabitants, or even to trespassers (*London C. C. v. Jones*, [1912] 2 K. B. 504; 76 J. P. 293; 34 Digest 591, 113).

(b) The erection of a hoard is not a condition precedent to the institution of proceedings against the owner (*R. v. Tyrone County JJ.*, [1928] N. I. 103).

(c) See *R. v. Lee* (1878), 4 Q. B. D. 75; 43 J. P. 302; 19 Digest 259, 411, where it was held that the incumbent of a church was not the owner so as to render him liable in respect of its dangerous condition. The owner may remain liable under this section though a notice has been served upon him for the purpose of compulsorily taking his buildings under the Artizans and Labourers Dwellings Improvement Act, 1875 (repealed and replaced by the Housing of the Working Classes Act, 1890, see now Part III. of the Housing Act, 1936) (*Barnet v. Metropolitan Board of Works* (1882), 46 J. P. 469; 46 L. T. 384; 38 Digest 189, 276). Although the justices have jurisdiction to inquire who is the owner of the wall in order to ascertain whether the proper notices have been given, that inquiry is one preliminary to the exercise of their jurisdiction, and their decision as to ownership is not conclusive in a subsequent proceeding to recover expenses (*R. v. Cork Recorder*, [1913] 2 I. R. 35).

(d) Compare the provisions of a local Act in *Cheetham v. Manchester Corporation* (1875), L. R. 10 C. P. 249; 39 J. P. 343; 38 Digest 188, 269. The section implies that on the surveyor's complaint a summons must issue.

(e) An order requiring an owner to "take down, rebuild and repair" a wall "to the satisfaction of" the surveyor is not bad for uncertainty (*R. v. Tyrone JJ.*, [1928] N. I. 103).

(f) The expenses are recoverable, although the matter has never been actually before the local authority but has been entirely in the hands of their surveyor by their general directions to him (*London C. C. v. Hobbs* (1896), 61 J. P. 85; 75 L. T. 687). As to the expenses which may be recovered, see *Debenham v. Metropolitan Board of Works* (1880), 6 Q. B. D. 112; 45 J. P. 190; 38 Digest 189, 272. They include the expenses of reinstating the pavement (*Crisp v. London C. C.*, [1899] 1 Q. B. 720; 63 J. P. 484; 26 Digest 514, 2179). As between tenant for life of leaseholds and remainderman these expenses are chargeable against income (*Re Copland's Settlement, Johns v. Carden*, [1900] 1 Ch. 326; 34 Digest 592, 119; and see *Re Willis, Willis v. Willis*, [1902] 1 Ch. 15; 40 Digest 684, 2200). These expenses are "outgoings" within the meaning of a contract for sale (*Tubbs v. Wynne*, [1897] 1 Q. B. 74; 40 Digest 128, 1020). With regard to the liability as between vendor and purchaser of leaseholds, see *Re Highett and Bird's Contract*, [1903] 1 Ch. 287; 40 Digest 186, 1548. Where an owner was required to do work under this section, and he applied to the tenant for leave to enter, who vacated her premises and intimated an intention of surrendering them, and the owner accepted the key and executed the works, thereby rendering occupation impossible, it was held there had been an acceptance of the surrender (*Smith v. Roberts*, Times, April 13th, 1892). As to the tenant's liability under an ordinary covenant to repair, see *Lister v. Lane*, [1893] 2 Q. B. 212; 57 J. P. 725; 31 Digest 328, 4700; *Wright v. Lawson* (1903), 68 J. P. 34; 31 Digest 329, 4713.

Levy of
expenses by
distress.

76. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly (a).

(a) These expenses must be recovered within six months from the date of demand. See the cases in the notes to s. 252 of the P. H. A., 1875, *post*. But it is not necessary that three months should elapse between the date of the demand and the commencement of the proceedings for the recovery of the expenses, because s. 257 of the P. H. A., 1875, only applied in cases of apportionment (*Usk U. D. C. v. Mortimer* (1903), 68 J. P. 38; 90 L. T. 25; 33 Digest 404, 1150).

If owner
cannot be
found within
the limits, or
distress cannot
be made, com-
missioners may

77. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving twenty-eight days notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building or on the land whereon such building stood, may take such

building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845 (a), in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

Section 77.

take the house or ground.
8 & 9 Vict. c. 18.

(a) Section 18 *et seq.*, ante, pp. 4110 *et seq.*

78. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on demand; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

Commissioners may sell the materials for payment of expenses, restoring to the owner the overplus arising from the sale.

And with respect to precautions during the construction and repair of the sewers, streets, and houses, be it enacted as follows :

Precautions during repairs.

79. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoring-up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents; and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners shall for every such offence be liable to a penalty not exceeding five pounds (a).

Houses to be protected, and bars to be erected across streets, during repairs.

(a) This section does not mean that the traffic in the street is to be entirely stopped during the execution of the works, but merely that bars and chains or other protection should be placed so as to prevent vehicles and persons from passing over the place where the works are being executed (*Woodall v. Nuttall* (1891), 56 J. P. 150; 8 T. L. R. 68; 26 Digest 390, 1172). As to the prohibition or restriction of traffic during road repairs, etc., see s. 47, Road Traffic Act, 1930.

80. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during

Hoards to be set up during repairs, with footways and lights.

Section 80. the night; and every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued (a).

(a) In districts where the P. H. A., 1890, has been adopted, this section has been superseded by s. 34 of that Act, *post*. And where Part II. of the P. H. A., 1907, applies, hoards must, under s. 32 of that Act, *post*, be securely fixed to the satisfaction of the local authority under penalties as therein provided. As to the right to erect a hoarding, though it may obstruct a highway to some extent, see *Fisher v. Prowse*, *ante*, p. 4205. As to the liability for damages for wrongfully erecting and continuing a hoarding, see *Bradbee v. Christ's Hospital Governors* (1842), 4 Man. & G. 714; 5 Scott, N. R. 79; 34 Digest 594, 147. As to a case where a licence for a hoarding was required by a local Act, see *R. v. London Commissioners of Sewers* (1870), 22 L. T. 582; 26 Digest 516, 2196; *Barnett v. Covell* (1903), 68 J. P. 93; 90 L. T. 29; 26 Digest 567, 2601; *Rockleys, Ltd. v. Pritchard* (1909), 74 J. P. 11; 101 L. T. 575; 26 Digest 567, 2602; *Stockport Corporation v. Rollinson* (1910), 74 J. P. 236; 102 L. T. 567; 26 Digest 567, 2603. As to the liability for injuries caused by negligently erecting and keeping a hoarding, see *Hoare v. Kearley* (1885), 1 T. L. R. 426; 26 Digest 441, 1576. As to rating of hoardings used as advertising stations, see the Advertising Stations (Rating) Act, 1889, and *Chappell v. St. Botolph Overseers*, [1892] 1 Q. B. 561; 56 J. P. 310; 38 Digest 431, 54; *Shelley v. Dillon* (1892), 30 L. R. Ir. 304; *Burton v. St. Giles and St. George's Assessment Committee*, [1900] 1 Q. B. 389; 64 J. P. 213; 38 Digest 458, 228; and resolutions 23 and 53 of the Central Valuation Committee in the 1st and 4th series of representations made by that committee under s. 57 of the R. and V. Act, 1925.

When building materials are deposited in streets, etc. the same shall be lighted at night and fenced.

81. When any building materials, rubbish, or other things are laid, or any hole made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising, while such materials or hole remain; and such person shall, at his own expense, cause such materials or other things, and such hole, to be sufficiently fenced and inclosed, until such materials or other things are removed, or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty not exceeding five pounds, and a further penalty not exceeding forty shillings for every day while such default is continued (a).

(a) In *Fearnley v. Ormsby* (1879), 4 C. P. D. 136; 43 J. P. 384; 26 Digest 416, 1345, it was held that a surveyor of highways was rightly convicted under s. 72 of the Highway Act, 1835, for leaving materials for the repair of the road without lights and fences at night. As to personal knowledge being necessary for conviction, see *Hardcastle v. Bielby*, [1892] 1 Q. B. 709; 56 J. P. 549; 26 Digest 413, 1327.

Penalty for continuing deposits of building materials or excavations for an unreasonable time.

82. In no case shall any such building materials or other things or such hole be allowed to remain for an unnecessary time, under a penalty not exceeding five pounds to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding forty shillings for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

83. If any building or hole or any other place near any street (a) be, for want of sufficient repair, protection, or inclosure, dangerous to the passengers along such street, the commissioners shall cause the same to be repaired, protected, or inclosed, so as to prevent danger therefrom; and the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

Section 83

Commissioners to cause dangerous places to be repaired or inclosed.

(a) A goit running by the side of an ancient public footpath was held not to be a hole or other place within the meaning of these words (*Wilson v. Halifax Corporation, post*).

Apart from this enactment the occupier of adjoining land is liable to be indicted for a nuisance if he leaves a dangerous excavation adjoining the highway without a fence (*Barnes v. Ward* (1850), 9 C. B. 392; 19 L. J. C. P. 195; 36 Digest 130, 862), unless the highway has been dedicated subject to the nuisance (*Robbins v. Jones* (1863), 15 C. B. (N.S.) 221; 33 L. J. C. P. 1; 26 Digest 442, 1590). This last mentioned case was followed in *Horridge v. Makinson* (1915), 79 J. P. 484; 84 L. J. K. B. 1294; 26 Digest 542, 2407. See also *Att.-Gen. v. Roe*, [1915] 1 Ch. 235; 79 J. P. 263; 26 Digest 451, 1666.

See also s. 31 of the P. H. A., 1907, *post*, as to fencing lands adjoining streets.

* * * * *

THE CEMETERIES CLAUSES ACT, 1847.

(10 & 11 VICT. c. 65) (a).

An Act for consolidating in one Act certain provisions usually contained in Acts authorising the making of Cemeteries. [9th July, 1847.]

[1.] This Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Incorporation with special Act.

(a) This Act is incorporated with the P. H. (Interments) Act, 1879, *post*.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows: *Interpretation.*

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereinafter passed authorising the making of a cemetery, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the company" shall mean the person by the special Act authorised to construct the cemetery.

"The Special Act."

"Prescribed."

"The lands."

"The company."

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number: *Number.*

Section 3.	Words importing the masculine gender shall include females :
Gender.	The word " person " shall include a corporation, whether aggregate or sole :
" Person."	
" Lands."	The word " lands " shall include messuages, lands, and hereditaments, of any tenure :
" The cemetery."	The expression " the cemetery " shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorised to be constructed :
" Month."	The word " month " shall mean calendar month :
" Superior courts."	The expression " superior courts " shall mean her Majesty's superior courts at Westminster . . . as the case may require (a) :
" Oath."	The word " oath " shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath :
" Established Church."	The expression " Established Church " shall mean the . . . church of England . . . as by law established (a) :
" County."	The word " county " shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town :
" Justice."	The word " justice " shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated ; and where any matter is authorised or required to be done by " two justices," the expression " two justices " shall be understood to mean two or more justices met and acting together (b) :
" Two justices."	
" Quarter sessions."	The expression " quarter sessions " shall mean the quarter sessions as defined by the special Act ; or if such expression be not therein defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace.

(a) Words relating to Ireland only are here omitted.

(b) And see s. 64, *post*, p. 4221.

Citing the Act. And with respect to citing this Act or any part thereof, be it enacted as follows :

Short title. 4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression " The Cemeteries Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts. 5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act ; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the making of the cemetery, be it enacted as follows: Section 6.

6. Where by the special Act the company shall be empowered for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845 (a), and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845 (a), for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof.

Making of cemetery.

Taking of lands for purposes of special Act to be subject to this Act and the Lands Clauses Act.

8 & 9 Vict. c. 12.

(a) *Ante*, p. 4104. A local authority may obtain a provisional order for the compulsory purchase of land under s. 160 of the L. G. A., 1933, *ante*, p. 978.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, described in the special Act or the schedule thereto, the company, after giving ten days' notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate, as if such omission, mis-statement, or wrong description had not been made.

Correction of errors and omissions in special Act.

8. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Certified copies of alterations, etc., to be evidence.

9. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of such land for any purpose except such as shall be authorised by this (a) or the special Act, or any Act incorporated therewith.

Land used for burials not to be used for other than authorised purposes.

(a) See s. 40, *post*, p. 4218. See also *R. v. Twiss* (1869), L. R. 4 Q. B. 407; 33 J. P. 516; 7 Digest 553, 306; *Campbell v. Liverpool Corporation* (1870), L. R. 9 Eq. 579; 7 Digest 550, 235; *Harper v. Forbes* (1859), 5 Jur. (n.s.) 275; 7 Digest 534, 149. And see the Burial Act, 1900, s. 6, *post*, p. 4993, as to the necessity for leave of the M. of H. to the use of unconsecrated land for other purposes.

10. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or if no distance be prescribed, two (a)

Cemetery not to be within a certain distance of houses.

Section 10. hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house (b).

(a) Now one hundred yards. See the Burial Act, 1906, s. 2, *post*, p. 5029.

(b) This distance is to be calculated from the house itself, not from the curtilage (*Wright v. Wallasey L. B.* (1887), 18 Q. B. D. 783; 52 J. P. 4; 7 Digest 549, 273). See also s. 9 of the Burial Act, 1855, which prevents land not already used or appropriated as a cemetery being used for actual burials within one hundred yards of a dwelling-house without the consent of the owner and occupier. This section is directed against actual burial, and did not prevent the inclusion of land within the prescribed distance in the cemetery, so long as it was not used for actual burials (*Lord Cowley v. Byas* (1877), 5 Ch. D. 944; 41 J. P. 804; 7 Digest 548, 272), but it was held to prevent a burial authority, who had laid out a burial ground since 1855, from using it for burials within two hundred yards of a dwelling-house erected after the burial ground had been laid out, without the consent mentioned (*Godden v. Hythe Burial Board*, [1906] 2 Ch. 270; 70 J. P. 285; 7 Digest 549, 275). The law as settled by this decision has, however, since been modified by s. 1 of the Burial Act, 1906, *post*, p. 5029, which enacts that the consent above mentioned shall not be and shall be deemed never to have been required in any case where the dwelling-house is or has begun to be erected, or is or was erected or completed after any part of the ground is or has been used or appropriated for a burial ground, subject to a proviso for certain vested rights. It seems that the necessary consents may be purchased, it is not required that they should in all cases be given for nothing. No action can be brought under s. 9 of the Act of 1855 by a person who is a mere nominee of one who has just sold the land to the local authority for a cemetery (*Toms v. Clacton U. D. C.* (1898), 62 J. P. 505; 78 L. T. 712; 7 Digest 549, 274). As to the position of an owner within an area where an Order in Council requires the consent of the L. G. B. (now M. of H.), see *Clegg v. Metcalfe*, [1914] 1 Ch. 808; 78 J. P. 251; 7 Digest 549, 276.

By s. 5 of the Cremation Act, 1902, *post*, p. 4999, no crematorium shall be constructed nearer to any dwelling-house than two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority.

Company may
build chapels,
and lay out
their grounds.

11. The company, upon any land which by the special Act they are authorised to use for the purposes of the cemetery, may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit (a).

(a) See s. 25, *post*, p. 4216, and the Burial Act, 1900, s. 2, *post*, p. 4990.

Company may
make or widen
roads to
cemetery.

12. The company, upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

No road to be
widened with-
out consent.

13. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof, if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law.

Improvement
of roads.

14. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same.

15. [*Cemetery to be inclosed and fenced*] (a).

(a) This section no longer applies to cemeteries provided under the Public Health (Interments) Act, 1879. See the Burial Act, 1900, s. 10, *post*, p. 4994. It required the provision of a wall or fence at least eight feet high. Burial grounds provided under the Burial Acts are not subject to any statutory requirements as to the height of fences; the L. G. B. and M. of H. have considered it sufficient to have a wall or fence so constructed as to exclude dogs and other animals.

Cemetery to be
kept in repair.

16. The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the monies to be received by them by virtue of this and the special Act (a).

(a) The company are occupiers and rateable (*R. v. St. Mary Abbot's, Kensington* (1840), 12 Ad. & El. 824; 5 J. P. 178; 7 Digest 564, 387; and see *R. v. Abney Park Cemetery Co.* (1875), L. R. 8 Q. B. 515; 37 J. P. 822; 7 Digest 564, 385).

17. Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers (a). Section 17.
Compensation for damage.

(a) See also *Crowhurst v. Amersham Burial Board* (1878), 4 Ex. D. 5; 2 Digest 65, 412; and the observations on that case in *Cheater v. Cater*, [1918] 1 K. B. 247; 2 Digest 65, 413.

And with respect to preventing nuisance from the cemetery, be it enacted as follows :

18. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed. Prevention of nuisances.
Power to make sewers, drains, etc. in and about the cemetery.

19. When any street or road or sewer shall be opened with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847 (a), with respect to breaking up of streets for the purpose of laying pipes, so far as the same are consistent with this Act and applicable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer. Provisions of 10 & 11 Vict. c. 17 incorporated with this Act.

(a) Sections 28—34, *ante*, pp. 4183—6.

20. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds (a). Penalty on company for allowing water to be fouled.

(a) See also *Ballard v. Tomlinson* (1885), 29 Ch. D. 115; 49 J. P. 692; 44 Digest 5, 7.

21. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter, in any of the superior courts, by action of debt or on the case : Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased. By whom, how, and within what time, such penalty may be recovered.

22. In addition to the said penalty of fifty pounds, (and whether such penalty is recovered or not,) any person having right to use the water fouled by such offensive matter may sue the company, in an action on the case, in any court of competent jurisdiction, for any damage specially sustained by him by reason of the water being so fouled; or if no special damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person. Damages, or a daily penalty during the continuance of the offence, after notice, may be recovered.

And with respect to burials in the cemetery, be it enacted as follows :

23. The bishop of the diocese in which the cemetery is situated may, on the application of the company (a), consecrate any portion of the cemetery Burials.
Part of cemetery may

Section 23. set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

be set apart for burial according to rites of Established Church.

(a) It did not appear to be obligatory on the company to make this application. Therefore it would seem that no *mandamus* would lie to make them do it as it would in the case of a burial board under s. 12 of the Burial Act, 1857. And if no part of the cemetery is consecrated, then ss. 24—34 of this Act have no application. But now under the Burial Act, 1900, s. 1, *post*, p. 4990, there is provision made for enforcing consecration of part in the case of a cemetery provided by a burial authority within the meaning of that Act.

Consecrated and unconsecrated ground to be defined.

24. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery (a).

(a) No wall or fence between the consecrated and unconsecrated portions is necessary if sufficient boundary marks of iron or stone be maintained (Burial Act, 1857, s. 11). See also *R. v. Tiverton Burial Board* (1858), 22 J. P. 529; 31 L. T. (o.s.) 233; 7 Digest 543, 232. An urban district council acting as a burial board proposed to use the word "general" instead of the word "unconsecrated." The L. G. B. stated that they were advised that if unconsecrated ground was not so described in documents it was essential that these should be so framed as to leave no doubt as to the intention to denote unconsecrated ground by any other description which might be adopted.

Chapel for Established Church service.

25. The company shall build, within the consecrated part of the cemetery and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rights of the Established Church (a).

(a) See, however, the Burial Act, 1900, s. 2, *post*, p. 4990.

Removal of bodies from consecrated ground.

26. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church (a).

(a) By s. 25 of the Burial Act, 1857, no body may be removed from a place of burial (except from one consecrated place of burial to another by faculty granted by the ordinary for that purpose), without licence under the hand of a Secretary of State. See also *St. Helen's, Bishopsgate (Rector) v. Parishioners*, [1892] P. 259; 7 Digest 560, 358; *St. Mary-at-Hill (Rector) v. Parishioners*, [1892] P. 394; 56 J. P. 824; 7 Digest 558, 340; *St. Botolph Without, Aldgate, Vicar v. Parishioners (No. 1)*, [1892] P. 161; 7 Digest 555, 324; *Lee v. Hawtrey*, [1898] P. 63; 7 Digest 558, 342; *St. Nicholas, Leicester (Vicar) v. Langton*, [1899] P. 19; 7 Digest 556, 326. It is within the jurisdiction of the Consistory Court to grant a faculty for the examination of the contents of a coffin buried in consecrated ground, and s. 25 of the Burial Act, 1857, does not make the licence of the Home Secretary a condition precedent to such grant (*R. v. Tristram*, [1898] 2 Q. B. 371; 7 Digest 561, 363). But a consistory Court has no power to order the disinterment of a body, or to issue a citation to a cemetery company to show cause against the making of such an order (*R. v. Tristram* (1899), 63 J. P. 391; 80 L. T. 414; 7 Digest 561, 365).

27. [Appointment and licensing of chaplain] (a).

(a) By s. 7 of the Burial Act, 1900, *post*, p. 4993, the power of the burial authority to appoint a chaplain for a burial ground provided under the P. H. (Interments) Act, 1879, shall cease. This is because under the same section the incumbent of the parish is to perform the service for his own parishioners and those dying in his parish, as he does under the Burial Acts. The same section also provides for registration of the burials.

28. [Burial service over bodies entitled to burial in consecrated ground.]

Other clergy men of Established Church may be allowed to officiate.

29. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain

with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery. Section 29.

30. [*Company to pay the chaplain a stipend approved by the bishop.*]

31. [*Stipend may be recovered by action at law.*]

32. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England (a); and such register books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese.

Register of burials in the consecrated portion.

(a) That is, under the Parochial Registers Act, 1812. See Brooke Little's Law of Burials. This, however, does not apply to any burial in the consecrated part of a burial ground provided under the P. H. (Interments) Acts, 1879, but burials there are now under s. 7 of the Burial Act, 1900, *post*, p. 4993, registered like burials in the unconsecrated part.

33. The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by the Births and Deaths Registration Act, 1836, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Registers to be subject to the regulations of 6 & 7 Will. 4, c. 86, as to searches, etc.

34. The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the services for burials in the consecrated part of the cemetery, and allow to such clerk such stipend (a) as they think proper out of the monies to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

Appointment of clerk for consecrated part of the cemetery.

(a) By s. 3 (5) of the Burial Act, 1900, *post*, p. 4992, no fee other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or other ecclesiastical officer in respect of interments in a burial ground maintained by a burial authority. This, however, is subject to a proviso for compensation in respect of rights existing at the date of the passing of the Act.

35. The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint (a).

Burial of persons not members of Established Church.

(a) By s. 9 of the Burial Act, 1900, *post*, p. 4994, the unconsecrated part of a burial ground provided under the P. H. (Interments) Act, 1879, shall be allotted in such manner and in such portions as may be sanctioned by one of her Majesty's principal Secretaries of State.

36. The company may allow, in any chapel built within the unconsecrated part of the cemetery (a), a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorised by law to officiate in such church or congregation, or recognised as such by the religious community or society to which he belongs.

Any burial service may be performed in chapels on unconsecrated part.

(a) See the Burial Act, 1900, s. 2, *post*, p. 4990.

Section 37. 37. The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit out of the monies to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure (a).

Power to
appoint grave-
diggers, etc.

(a) A byelaw of a cemetery prohibited any discharged servant from being admitted to the cemetery except by special leave of the directors, and it authorised his removal. D., the owner of a grave, employed W., a discharged servant, to do some work:—*Held*, that there was nothing unreasonable in the byelaw, and that W. was rightly excluded by force from the cemetery (*Martin v. Wyatt* (1883), 48 J. P. 215; 7 Digest 547, 267).

Regulations. 38. The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels. 39. No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

Exclusive rights of burials. And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the cemetery set apart for grant of exclusive rights of burial. 40. The company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery (a).

(a) The sale of an exclusive right of burial under the Burial Act, 1852, s. 33, was held not to deprive the burial authority of the general control of the burial ground under s. 38, or to prevent their removing a wreath covered with a glass shade and wire frame which had been placed on the grave (*McGough v. Lancaster Burial Board* (1888), 21 Q. B. D. 323; 52 J. P. 740; 7 Digest 543, 231). The grantee of an exclusive right of burial in a space upon which a vault is constructed with the consent of the burial authority has no freehold interest in the vault, no right to use the vault for private ceremonies and no right to open and enter the vault except for purposes of repair and burial without the consent of the burial authority (*Hoskyns-Abrahall v. Paington U. D. C.*, [1929] 1 Ch. 375; 93 J. P. 93; Digest Supp.). The company are liable to pay income tax on sums paid to them for keeping private graves in order (*Paisley Cemetery Co. v. Reith*, W. N. (1898), 196; 63 J. P. 806; 7 Digest 564, 386 i).

Plan of parts
set apart for
grant of
exclusive rights,
and book of
reference
thereto, to be
kept.

41. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an extensive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Grant of exclu-
sive right, etc.,
may be accord-
ing to form in
Schedule.

42. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet, or gravestone, may be made in the form in the Schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them (a).

(a) *Sic.* As to the form, see an adaptation for the use of local authorities in the Encyclopædia of Forms and Precedents, Vol. 2, title BURIALS.

43. A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling, to the clerk of the company.

Section 43.

Register of grants to be kept.

44. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will (a).

Rights of burial may be assigned or bequeathed.

(a) A burial company having erected a memorial stone, removed and sold it because it was not paid for:—*Held*, that the proper remedy of the company was to sue for the money, and that they had no right to remove the stone (*Sims v. London Necropolis Co.* (1885), 1 T. L. R. 584; 7 Digest 548, 268).

45. Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the Form in the Schedule to this Act annexed, or to the like effect (a).

Form of assignments.

(a) See also form in the *Encyclopædia of Forms and Precedents*, Vol. 2, title BURIALS.

46. Every such assignment shall, within six months after the execution thereof, if executed in Great Britain . . . or within six months after the arrival thereof in Great Britain . . . if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial, no right of burial shall be acquired under any such memorial (a); and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Assignments to be registered.

(a) *Sic. Quere*, a mistake for "assignment."

47. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition, shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant; and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Probates of wills disposing of rights of burial to be registered.

48. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

Burials in places where exclusive right has been granted.

49. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usage of the Estab-

No grant to give right in consecrated ground, etc. to

Section 49. lished Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

persons not entitled to be buried according to rites of Established Church.

Power to remove monuments erected without authority.

50. The company may take down and remove any gravestone, monument, tablet, or monumental inscription which shall have been placed within the cemetery without their authority (a).

(a) If the right be granted to the grantee and his heirs, it is doubtful whether this section would apply. See *Matthews v. Jeffrey* (1880), 6 Q. B. D. 290; 45 J. P. 361; 7 Digest 547, 260. An exclusive right of burial is an easement, and can only be granted by deed (*Bryan v. Whistler* (1828), 8 B. & C. 288; 7 Digest 530, 97). See also the Burial Act, 1852, s. 33, and *Ashby v. Harris* (1868), L. R. 3 C. P. 523; 32 J. P. 567; 7 Digest 543, 230; *McGough v. Lancaster, ante*, p. 4218.

Rights of bishop to object to monumental inscriptions in consecrated part of cemetery.

51. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law (a) has to object to or procure the removal of any monumental inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground.

(a) See *Maidman v. Malpas* (1794), 1 Hag. Con. 205; 7 Digest 532, 124; *Harper v. Forbes* (1859), 5 Jur. (N. S.) 275; 7 Digest 534, 149; *Ex parte Medwin* (1853), 1 E. & B. 609; 17 J. P. 166; *Keet v. Smith* (1876), 1 P. D. 73; 40 J. P. 196; 7 Digest 533, 139.

Payments to incumbents of parishes.

And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows (a) :

(a) Sections 52—57 entitled incumbents and parish clerks only to such fees as were prescribed by the special Act. They were extended to the disposition or interment of the ashes of a cremated body by s. 13 of the Cremation Act, 1902, *post*, p. 5002. Where a cemetery has been provided by a local authority under the P. H. (Interments) Act, 1879, *post*, that Act is the special Act (s. 3), and in such case the special Act prescribes no sums as payable to incumbents. In such a cemetery, ss. 52—57 are wholly inapplicable. But the Burial Act, 1900, by s. 3, *post*, p. 4991, now requires the burial authority to prepare a table of fees to be approved by a Secretary of State, and these fees are to be collected by the authority, and paid over to the minister or sexton performing the services.

* * * * *

Protection of cemetery.

Penalty for damaging the cemetery.

And with respect to the protection of the cemetery, be it enacted as follows :

58. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Disturbances and nuisances in cemetery.

59. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Annual accounts.

60. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt and expenditure of all monies levied by virtue of this or the special Act for the year ending on the thirty-first day of December,

or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last-mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds (*a*). Section 60.

(*a*) Section 61 (as to tender of amends) was repealed by the S. L. R. A., 1894. See now the Public Authorities Protection Act, 1893, *post*.

* * * * *

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows : *Recovery of damages and penalties.*

62. The clauses of the Railways Clauses Consolidation Act, 1845 (*a*) with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively (*b*). *Railways Clauses Consolidation Act (8 & 9 Vict. c. 20), incorporated as to damages, etc.*

(*a*) *Ante*, p. 4156.

(*b*) Section 63 related only to penalties in Ireland, and was repealed by the S. L. R. A. 1875.

* * * * *

64. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices. *Powers of justices.*

65. [*False evidence*] (*a*).

(*a*) Repealed by the Perjury Act, 1911.

And with respect to affording access to the special Act, be it enacted as follows : *Access to special Act.*

66. The company shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in which the cemetery is situated a copy of such special Act, so printed as aforesaid; and the said clerk of the peace shall receive, and he and the company respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by the Parliamentary Documents Deposits Act, 1837. *Copies of special Act to be open to inspection.*

67. If the company fail to keep or deposit any of the said copies of the special Act, as hereinbefore-mentioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited. *Penalty on company failing to keep or deposit such copies.*

7 Will. 4 & 1 Vict. c. 83.

THE TOWN POLICE CLAUSES ACT, 1847.

Section 68.

—
Saving as to
future Acts.

68. Nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

* * * * *

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

FORM OF GRANT OF RIGHT OF BURIAL.

By virtue of [*here name the special Act*] we [*here state the name or description of the company*], in consideration of the sum of _____ to us paid by _____, do hereby grant unto the said _____ the exclusive right of burial [or the right of burying _____ bodies, as the case may be,] [*or the right of placing a monument, tablet, or gravestone,*] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add "numbered _____ on the plan of the cemetery, made in pursuance of the said Act,"*] to hold the same to the said _____ in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal, [*or under our hands and seals, as the case may be,*] this _____ day of _____ in the year of our Lord _____.

FORM OF ASSIGNMENT OF RIGHT OF BURIAL.

I, A.B., of _____, in consideration of the sum of _____ paid to me by C.D., of _____, do hereby assign unto the said C.D. the exclusive right of burial in [*here describe the place*], and numbered _____ on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or unto A.B. of _____*] in perpetuity [*or as the case may be*] by [*here state the name of the company*], by a deed of grant bearing date the _____ day of _____, and all my estate, title, and interest therein, to hold the same unto the said C.D. in perpetuity [*or, as the case may be, for the remainder of the period for which the same was granted by the said company*] subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal, this _____ day of _____.

THE TOWN POLICE CLAUSES ACT, 1847.

(10 & 11 VICT. c. 89)(a).

An Act for consolidating in one Act certain provisions usually contained in Acts for regulating the Police of Towns. [22nd July, 1847.]

Incorporation
with special
Act.

[1.] This Act shall extend only to such towns or districts in England or Ireland as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

(a) For the incorporation of parts of this Act with the P. H. A., 1875, in urban districts, see s. 171 of that Act, *ante*, p. 4458. This Act is amended by the Town Police Clauses Act, 1889, *post*, p. 4784, which extends to omnibuses the provisions of certain sections relating to hackney carriages, though, in view of the provisions of the Road Traffic Act, 1930, the reference is now substantially only to omnibuses excluded from that Act, *i.e.*, those drawn by animals or birds (there has been an emu-bus).

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows: Section 1.
Interpretation.

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district defined or comprised therein, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof. "The special Act."
"Prescribed."
"The commissioners."

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say), Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and Number.

words importing the plural number shall include the singular number:

Words importing the masculine gender shall include females: Gender.

The word "person" shall include a corporation, whether aggregate or sole: "Person."

The word "lands" shall include messuages, lands, tenements, and hereditaments, of any tenure: "Lands."

The word "street" shall extend to and include any road, square, court, alley, and thoroughfare, or public passage, within the limits of the special Act (a): "Street."

The word "month" shall mean calendar month: "Month."

The expression "superior courts" shall mean her Majesty's superior courts of record at Westminster. . . . "Superior courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath."

The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together: "Justice."
"Two justices."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined shall mean the general or quarter sessions of the peace which shall be held in or at the place nearest to the district comprised within the special Act for the county in which such district or some part thereof is situated, or for some division of such county having a separate commission of the peace: "Quarter sessions."

Section 3. The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

"Cattle."

(a) It appears from *Curtis v. Embery* (1872), L. R. 7 Ex. 369; 42 Digest 856, 93, that in this Act the definition here given must be adopted. See also *Jones v. Short* (1900), 64 J. P. 247; 69 L. J. Q. B. 473; 42 Digest 856, 94.

See as to the meaning of this term, *Madlock v. Wallasey L. B.*, ante, p. 4164; *Heatherton v. Watson* (1880), 7 R. (Ct. of Sess.) 5. These cases decide that the seashore or foreshore is not a street; see also the notes to ss. 38 and 45, post, pp. 4237, 4240.

The P. H. A., 1907, s. 81 post, p. 5056, where in force extends this definition for the purposes of s. 28 of this Act, post, p. 4226.

Citing the Act. And with respect to citing this Act, or any part thereof, be it enacted as follows:

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Town Police Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

* * * * *

Obstructions and Nuisances.

And with respect to obstructions and nuisances in the streets; be it enacted as follows (a):

(a) It is to be observed that many of the offences mentioned in the following sections are punishable under the provisions of the Highway Acts and the Vagrancy Acts, which should, therefore, be referred to in further illustration of the meaning of these sections.

Power to make orders for preventing obstructions in the streets during public processions, etc.

21. The commissioners may from time to time make orders (a) for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets, within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case where the streets are thronged or liable to be obstructed (b), and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

(a) An urban authority acting under this section made an order that the constables stationed at certain crossings should give directions to the drivers of vehicles for the purpose of regulating the traffic. The driver of a motor cab was summoned for failing to stop his cab in accordance with the directions of the police officer, on duty, and was convicted. The Divisional Court held that the order implied an obligation on the part of drivers to obey the directions of the constable, and that, therefore, the appellant was rightly convicted (*Dudderidge v. Rawlings* (1912), 77 J. P. 167; 108 L. T. 802; 42 Digest 842, 4). See also s. 74 of the P. H. A., 1925, Vol. V., post, and s. 9 of the London Traffic Act, 1924, Vol. V., post, as to the direction of traffic by police constables. As to the prohibition of hawking by costermongers at stated times, see *Teale v. Williams*, [1914] 3 K. B. 395; 78 J. P. 383; 42 Digest 842, 3; *Edwards v. Wanstall* (1929), 94 J. P. 51; 28 L. G. R. 38; Digest Supp. An order under this section does not require confirmation by the M. of H. (*ibid.*). An order prohibiting hawkers, pedlars, etc., from using certain named streets during five months of the year was held not to be invalid, although it did not specify the hours during which the streets might not be used for the sale of the articles mentioned (*Etherington v. Carter*, [1937] 2 All E. R. 528; Digest Supp.).

(b) See s. 28, post, p. 4226, and *Fox v. Palmer* (1858), 22 J. P. 449; 33 Digest 537, 141, in regard to an obstruction by running horses in the access to a market. As to obstruction by a theatre queue, see the cases cited in note (p), to s. 28, post, p. 4231.

Power to regulate the route of persons

22. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship

within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive (a) any cart or carriage, or cattle, or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of Divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving; and any orders so made shall be printed or put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding forty shillings.

Section 22.

driving stage carriages, etc. near places of worship during hours of Divine service.

(a) A local Act for a parish in which there was a large cattle market enacted that it shall not be lawful for any drover or other person to conduct or drive through any of the streets in the parish any oxen, sheep, or other cattle during Sunday:—*Held*, that a person driving a van with horses, in which were calves being conveyed to the market, was not driving or conducting cattle within the meaning of the statute (*Triggs v. Lester* (1866), L. R. 1 Q. B. 259; 30 J. P. 228; 42 Digest 842, 1).

23. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners (a).

Power to stage carriages to deviate from route under order of commissioners.

(a) See *Chorlton v. Liggett* (1910), 74 J. P. 458; 103 L. T. 543; 42 Digest 843, 11. As no stage carriages are now licensed under the general law, this section is now inoperative.

24. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof (a), any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle (b).

Power to impound stray cattle.

(a) Under 4 Geo. 4, c. 95, s. 75, horses grazing on the side of a turnpike road with a man in charge of them were held not liable to be impounded as wandering, straying, or lying about the road (*Morris v. Jeffries* (1866), L. R. 1 Q. B. 261; 30 J. P. 198; 26 Digest 429, 1488).

(b) The Protection of Animals Act, 1911, s. 7 (1) (1 Halsbury's Statutes 377), requires persons impounding animals to supply them with food and water, and imposes a fine for neglect of the duty. This provision does not apply to the keeper of the pound (*Dargan v. Davies* (1877), 2 Q. B. D 118; 41 J. P. 468; 2 Digest 288, 589, decided under corresponding repealed provisions). The Act of 1911 also allows strangers to enter the pound and provide food and water under certain circumstances. The reasonable cost of food and water supplied is recoverable from the owners summarily (s. 7 (2), (3)). Under the Impounding of Distress Act, 1554, s. 2, no person may take for impounding more than fourpence for any one whole distress, under the pain of £5 to the party grieved.

25. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper or other person appointed by the commissioners for that purpose may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Power to sell cattle impounded for payment of penalty and expenses, after notice or advertisement

Section 26.

Persons guilty of pound breach to be committed for three months.

26. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence before any two justices, be committed by them to some common gaol or house of correction for any time not exceeding three months (a).

(a) Compare the Pound-breach Act, 1843, s. 1 (5 Halsbury's Statutes 156), as to pound-breach, and see *R. v. Gee* (1885), 49 J. P. 212; 1 T. L. R. 388; 33 Digest 426, 1387, decided with reference to that Act.

Power to provide a pound.

27. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners (a).

(a) A person who distrains cattle is bound to impound them in a proper pound; and if the usual pound is in an unfit state, he must find another (*Bignell v. Clarke* (1860), 5 H. & N. 485; 29 L. J. Ex. 257; 18 Digest 445, 1819). If the pound is wet and muddy, the distrainers are liable for any damage thereby caused to the distress (*Wilder v. Speer* (1838), 8 Ad. & El. 547; 7 L. J. Q. B. 249; 18 Digest 445, 1818). As to the distance which animals may be taken to a pound, see *Coaker v. Willcocks*, [1911] 2 K. B. 124; 27 T. L. R. 357; 7 Digest 295, 209.

Penalty on persons committing any of the offences herein named.

28. Every person who in any street (a), to the obstruction, annoyance or danger (b) of the residents or passengers (c), commits any of the following offences, shall be liable to a penalty not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days; and any constable (d) or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence; (that is to say,)

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises (e), trains, or breaks, or turns loose any horse or animal (f), or makes or repairs any part of any cart or carriage (except in cases of accident (g) where repair on the spot is necessary):

Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal (h):

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state (i):

Every person who after public notice given by any justice, directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice:

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with some accident, and which for the public safety or other reasonable cause ought to be killed on the spot (j):

Every person having the care of any waggon, cart, or carriage, who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage, as not to have due control over every animal drawing the same (k),

or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side (*l*), or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road, (except in cases of actual necessity, or some sufficient reason for deviation,) or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care :

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet (*m*) :

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle (*n*) :

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers, (except hackney carriages, and horses and other beasts of draught or burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority,) and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means (*o*) wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare (*p*) :

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same :

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway :

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard, on any footway (*q*), or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground :

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommodate the passage of any person over or along such footway (*r*) :

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway (*s*) :

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon (*t*) :

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution (*u*) :

Every person who wilfully and indecently exposes his person (*x*) :

Every person who publicly offers for sale or distribution, or exhibits to public view any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language (*y*) :

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Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework (z) :

Every person who wilfully and wantonly disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door (aa), or who wilfully and unlawfully extinguishes the light of any lamp :

Every person who flies any kite, or who makes or uses any slide upon ice or snow :

Every person who cleanses, hoops, fires, washes, or scalds any cask or tubs, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime :

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers) (bb) :

Every person who beats or shakes any carpet, rug, or mat (except door mats beaten or shaken before the hour of eight in the morning) :

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down :

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger :

Every occupier of any house or other building, or other person, who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story (cc) :

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without a sufficient light after sunset to warn and prevent persons from falling thereinto (dd) :

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill, into any street (ee) : Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases :

Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance (ff).

(a) See the definition in s. 3, *ante*, p. 4223, and compare the definition in the P. H. A., 1936, s. 343 (1), *ante*, p. 713. See also in relation to certain offences under this section the provisions of s. 81 of the P. H. A., 1907, *post*, p. 5056.

(b) These words govern the whole of the section. Compare the language of the Highway Act, 1835, s. 72 (9 Halsbury's Statutes 86), and the cases decided thereon : *Stinson v. Browning* (1866), L. R. 1 C. P. 321 ; 30 J. P. 312 ; 26 Digest 436, 1537 ; *Hill v. Somerset* (1887), 51 J. P. 742 ; 26 Digest 436, 1538. See also *Brotherton v. Titensor* (1896), 60 J. P. 72 ; 26 Digest 438, 1557 ; *Strickland v. Hayes*, [1896] 1 Q. B. 290 ; 60 J. P. 164 ; 38 Digest 164, 97 ; *Mantle v. Jordan*, [1897] 1 Q. B. 248 ; 61 J. P. 119 ; 38 Digest 159, 61. But in proceedings for an offence it is not necessary to call persons who have been actually annoyed, etc. (*Woolley v. Corbishley* (1860), 24 J. P. 173 ; 26 Digest 422, 1409 ; *Read v. Perrett*, *ante*, p. 4205 ; *R. v. Fermanagh J.J.* (1883), 14 L. R. Ir. 50 ; *McDonald v. White* (1882), 9 (Ct. of

Sess.) 43; *Black v. Simpson* (1883), 5 Coup., Ct. of Justiciary Cas. (Scotland), p. 212; *Semon v. Read* (1879), 4 Coup. 221; *Leisk v. Galloway* (1885), 12 R. (Ct. of Sess.) (J. C.) 5; *Dunn v. Holt* (1904), 68 J. P. 271; 26 Digest 415, 1340; *Hinde v. Evans* (1906), 70 J. P. 548; 26 Digest 415, 1341; *Lees v. Stone* (1919), 83 J. P. 163; 88 L. J. K. B. 1159; 26 Digest 434, 1523). See, however, *Stanley v. Farndale* (1892), 56 J. P. N. 709, where a conviction under a local Act was quashed on the ground that there was no evidence besides that of the constable that there was any annoyance. But where a byelaw of a borough provided that if any person should make any noise in the streets to the annoyance of the inhabitants he should be guilty of an offence, upon a summons against a newspaper boy for shouting out the name of a newspaper incessantly for six minutes, etc., it was held that it was not necessary to prove that more than one inhabitant had in fact been annoyed thereby (*Innes v. Newman*, [1894] 2 Q. B. 292; 58 J. P. 543; 38 Digest 166, 1178). But the information should state the name of the person alleged to have been annoyed; see *per* Lord Salvesen in *Graham v. M'Lennan*, [1911] S. C. (J.) 16.

(c) A byelaw contained the words "so as to constitute any reasonable ground of complaint to the passengers or the public," and the penalty was the same whichever class of persons had ground for complaint. Where an information and conviction described the offence as "contrary to the byelaw" without stating in terms any reasonable ground of complaint to the passengers or the public, or either of them, it was held that this statement was insufficient and the conviction was quashed (*Cotterill v. Lempriere* (1890), 24 Q. B. D. 634; 54 J. P. 583; 42 Digest 728, 1504).

(d) This term includes any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority (the P. H. A., 1875, s. 171, *post*, p. 4458). The police who arrest an offender against this section were held to require no authority to prosecute under P. H. A., 1875, s. 253 (cf. P. H. A., 1936 s. 298) (*Jobson v. Henderson* (1900), 64 J. P. 425; 82 L. T. 260; 38 Digest 170, 139). See, however, the comments on that case in *Sheffield Corporation v. Kitson*, [1929] 2 K. B. 322; 93 J. P. 135; Digest Supp. In the last-mentioned case it was held that proceedings for a penalty under a provision of this Act incorporated with the P. H. A., 1875, must be recovered in accordance with s. 253 of that Act (now repealed). See notes, *ante*, p. 1114, and Errata.

(e) See *Heatherton v. Watson*, *ante*, p. 4224.

(f) The owner of land adjoining a highway claiming the herbage on the side of the latter put his cattle thereon:—*Held*, that this was not turning an animal loose thereon (*Sherborn v. Wells* (1863), 3 B. & S. 784; 27 J. P. 566; 26 Digest 429, 1487). See also the provisions of the Highway Acts as to animals straying upon highways, the Highway Act, 1835, s. 74, and the Highway Act, 1864, s. 25 (9 Halsbury's Statutes 149), and the cases decided on these sections: *Morris v. Jeffries* (1866), L. R. 1 Q. B. 261; 30 J. P. 198; 26 Digest 429, 1488; *Lawrence v. King* (1868), L. R. 3 Q. B. 345; 32 J. P. 310; 26 Digest 429, 1489; *Golding v. Stocking* (1869), L. R. 4 Q. B. 516; 33 J. P. 566; 26 Digest 429, 1490; *Bothamley v. Danby* (1871), 36 J. P. 135; 24 L. T. 656, 26 Digest 430, 1494. And see *Higgins v. Searle* (1909), 73 J. P. 185; 100 L. T. 280; 2 Digest 234, 223; *Jones v. Lee* (1911), 76 J. P. 137; 106 L. T. 123; 2 Digest 234, 224; *Ellis v. Banyard* (1911), 106 L. T. 51; 28 T. L. R. 122; 2 Digest 234, 225. See also the provisions of this Act as to impounding animals, ss. 24—27, *ante*, p. 4223—4. As to the liability of a person for damage caused by animals while being driven along a street, see *Phillips v. Nicoll* (1884), 11 R. (Ct. of Sess.) 592; 2 Digest 234, f; *Tillet v. Ward* (1882), 10 Q. B. D. 17; 47 J. P. 438; 2 Digest 224, 167; *Goodwyn v. Cheveley* (1859), 4 H. & N. 631; 23 J. P. 487; 2 Digest 226, 182; and generally as to leading or driving animals in streets, see s. 80 of the P. H. A., 1907; *Turnbull v. Wieland* (1916), 33 T. L. R. 143; 2 Digest 235, 229. It should be noticed that although the owner of animals may be liable to a penalty under the Highway Acts for allowing them to stray on a highway, these acts impose no civil liability on the owner. See *Heath's Garage, Ltd. v. Hodges*, [1916] 2 K. B. 370; 80 J. P. 321; 26 Digest 429, 1486.

(g) A motor omnibus broke down and was unable to proceed on its journey under its own mechanism. It was pushed into a side street and there repaired. It was held that this was not a case where repair on the spot was necessary, as if it could be pushed so far it could be pushed farther, and the owner was not protected by the excepting clause in a similar section (*Chapman v. Rawlings* (1909), 73 J. P. 512; 101 L. T. 605; 42 Digest 849, 49).

(h) See also the Diseases of Animals Act, 1894, s. 22 (xxx) (1 Halsbury's Statutes 403), as to the powers of the Minister of Agriculture and Fisheries to make muzzling orders, and the Dogs Act, 1906 (1 Halsbury's Statutes 351), which deals with the liability of owners of dogs for injury to cattle, enables the Minister of Agriculture and Fisheries to make orders as to wearing of collars, etc., and provides for the seizure of stray dogs, etc. The Board made an Order as to the wearing of collars under the Diseases of Animals Acts, 1894—1909, dated February 8th, 1910. As to the proof of *scienter*, in case of damage to human beings, see *Worth v. Gilling* (1866), L. R. 2 C. P. 1; 2 Digest 245, 285; *Baldwin v. Casella* (1872), L. R. 7 Ex. 325; 2 Digest 246, 292; *Applebee v. Percy* (1874), L. R. 9 C. P. 647; 38 J. P. 567; 2 Digest 246, 294; *Parker v. Walsh* (1885), 1 T. L. R. 583; 2 Digest 247, 312; *Sanders*

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v. Teape (1884), 48 J. P. 757; 51 L. T. 263; 2 Digest 227, 188; *Gould v. McAuliffe*, [1941] 2 All E. R. 527. As to liability of master for injury to a third person caused by servant setting on dog, see *Baker v. Snell*, [1908] 2 K. B. 825; 2 Digest 240, 254. As to liability of the owner for injuries to cattle, sheep, and poultry, see the Dogs Acts, 1906 and 1928. The following cases as to the law as it stood under the now repealed Dogs Act, 1865, may also be referred to, viz.: *Wright v. Pearson* (1869), L. R. 4 Q. B. 582; 33 J. P. 534; 2 Digest 247, 307; *Lewis v. Jones* (1884), 49 J. P. 198; 2 Digest 228, 189; *Grange v. Silcock* (1897), 61 J. P. 709; 77 L. T. 340; 2 Digest 215, 111; *Elliott v. Longden* (1901), 17 T. L. R. 648; 2 Digest 247, 308; *Gardner v. Hart* (1896), 44 W. R. 527; 2 Digest 247, 309; *M'Kone v. Wood* (1831), 5 C. & P. 1; 2 Digest 239, 250. The removal of a dog which is dangerous and is not kept under proper control from the jurisdiction of a police court after the date of the alleged offence and before the date of the information or complaint, does not take away the power of the magistrates under s. 2 of the Dogs Act, 1871, to make an order against the owner that the dog is to be destroyed, provided that there has been no bona fide disposal of the dog (*Lockett v. Withey* (1908), 72 J. P. 492; 25 T. L. R. 16; 2 Digest 248, 316). Where justices made an order under the same section that a dangerous dog "should be kept under proper control and led by a leash by day and chained up at night," the court refused to make absolute a rule for a *mandamus* to state a case on the ground that the point could have been more conveniently raised by *certiorari* (*R. v. Owen, Ex parte Scovell* (1907), 72 J. P. 60; 52 Sol. J. 132; 2 Digest 248, 315).

(i) Proof that the defendant knew his dog had been bitten by a mad dog was held sufficient evidence of *scienter* in *Jones v. Perry* (1796), 2 Esp. 482; 2 Digest 244, 279.

(j) See the Protection of Animals Act, 1911 (1 Halsbury's Statutes 373), empowering the police to cause injured animals to be slaughtered, without the consent of the owner, after obtaining a veterinary certificate; and making the expenses recoverable from the owner as a civil debt.

(k) See *Phythian v. Baxendale*, [1895] 1 Q. B. 768; 59 J. P. 217; 26 Digest 437, 1548; *Hinde v. Evans* (1906), 70 J. P. 548; 26 Digest 415, 1341.

(l) There is not at common law any such rule of the road as to make the left always the proper side. See *Finegan v. L. & N. W. Rail. Co.* (1889), 53 J. P. 663; 5 T. L. R. 598; 42 Digest 844, 17. But see now the "highway code" under the Road Traffic Act, 1930, and as to the power of the local authority to make regulations as to street traffic, see s. 78 of the P. H. A., 1907, *post*. The absence of other traffic on the road is a good defence to proceedings under a byelaw similar to the text (*Bolton v. Everett* (1911), 75 J. P. 534; 105 L. T. 830; 42 Digest 843, 12). And see *Chorlton v. Liggett* (1910), 74 J. P. 458; 103 L. T. 543; 42 Digest 843, 11; *Nuttall v. Pickering*, [1913] 1 K. B. 14; 77 J. P. 30; 42 Digest 844, 20. For a case of alleged obstruction in passing a tramway car in a street where there was a double set of lines, see *Sleith v. Godfrey* (1920), 85 J. P. 46; 18 L. G. R. 727; 42 Digest 844, 23. And as to passing led horses on a road, see *per Lord Mackenzie in Umphray v. Ganson*, [1917] S. C. 371.

(m) See *Robertson v. Burkitt* (1858), 7 W. R. 50; 26 Digest 438, 1551.

(n) See *Chatterton v. Parker* (1914), 78 J. P. 339; 26 Digest 438, 1558. Note that this clause, unlike the Highway Act, 1835, s. 78 (9 Halsbury's Statutes 91), includes riding as well as driving furiously. See *Williams v. Evans* (1876), 1 Ex. D. 277; 41 J. P. 151; 26 Digest 438, 1552. See also the Offences against the Person Act, 1861, s. 35 (4 Halsbury's Statutes 610), and s. 74 of the P. H. A., 1925, Vol. V., *post*. A bicycle is a carriage within this provision (*Taylor v. Goodwin* (1879), 4 Q. B. D. 228; 43 J. P. 653; 26 Digest 438, 1553; *M'Kee v. M'Grath* (1892), 30 L. R. Ir. 41). A motor bicycle is a carriage within the meaning of the Customs and Inland Revenue Act, 1888, s. 4 (*O'Donoghue v. Moon* (1904), 68 J. P. 349; 90 L. T. 843; 39 Digest 238, 126; and see *Elieson v. Parker* (1917), 81 J. P. 265; 39 Digest 238, 128). See, further, as to bicycles and tricycles, the L. G. A., 1888, s. 85, *post*. By s. 1 (1) (b) of the Locomotives on Highways Act, 1896 (19 Halsbury's Statutes 64), a light locomotive is a carriage within the meaning of this section. See, however, as to excessive speed and other offences with motor cars, ss. 10 *et seq.*, Road Traffic Act, 1930, 23 Halsbury's Statutes, 619.

(o) Three defendants were convicted by the defendant justices, under this section, for obstructing passengers in the public street and unlawfully preventing persons passing there. It appeared by the evidence of a police constable that the three defendants were standing, with three or four other persons on the pavement, blocking up the same. Several persons had to leave the footpath and go into the road in order to pass. The constable spoke to the defendants, and asked them to move off. They then walked up the street, all three abreast, causing passengers who met them to leave the footpath and go into the road:—*Held*, that the conviction was wrong, and could not be sustained (*R. v. Long, etc. JJ.* (1888), 52 J. P. 630; 59 L. T. 33; 26 Digest 456, 1724). It was said in *Gill v. Carson*, [1917] 2 K. B. 674; 81 J. P. 250; 26 Digest 415, 1339, that *R. v. Long, etc. JJ.* had been impliedly overruled by *Hinde v. Evans* (1906), 70 J. P. 548; 26 Digest 415, 1341. And see *R. v. Williams* (1891), 55 J. P. 406; 26 Digest 456, 1725.

A shopkeeper in a borough placed goods upon the pavement in front of his shop for sale. Upon being summoned under this section for obstructing the footway, he contended that he *bonâ fide* claimed the right to place his goods there. The justices considered that their jurisdiction was ousted, but stated a case:—*Held*, that the justices ought to determine whether the land on which the goods were placed was part of the public highway or not, and that unless the defendant established a restricted dedication no question as to a claim of right arose (*Leicester Urban Sanitary Authority v. Holland* (1888), 52 J. P. 788; 57 L. J. M. C. 75; 26 Digest 308, 398). To a complaint before justices under the section for obstructing a public footway, it is a good defence that such footway was dedicated to the public subject to the right of the defendant to commit the acts of obstruction complained of, and such defence if raised *bonâ fide* ousts the jurisdiction of the justices. The evidence, however, to establish such a defence should be of a cogent character (*R. v. Londonderry J.J.*, [1902] 2 I. R. 266; 26 Digest 440, b). See also note (b) to s. 69 of the T. I. C. Act, 1847, *ante*, p. 4204.

(p) When an undoubted obstruction is proved, the plaintiff need not call persons to prove that they were obstructed, and, on the other hand, no evidence can be called to prove that they were not obstructed. See *Read v. Perrett*, *ante*, p. 4205; *McDonald v. White*, *ante*, p. 4228. Whether a person wilfully causes an obstruction in a public thoroughfare is in each case a question of degree depending upon the particular facts (*Dunn v. Holt* (1904), 68 J. P. 271; 73 L. J. K. B. 341; 26 Digest 415, 1340; *Lowdens v. Keaveney* (1903), 67 J. P. 378; 26 Digest 427, s). The fact that a horse and cart have been placed in charge of some one does not afford a defence to proceedings if there has been obstruction in point of fact. See *Hinde v. Evans* (1906), 70 J. P. 548; 26 Digest 415, 1341. On the other hand, there must be some evidence of obstruction, and where the only evidence was that two carters had left their carts outside a public house while they went in for refreshment, the Court quashed the conviction (*Gill v. Carson*, [1917] 2 K. B. 674; 81 J. P. 250; 26 Digest 415, 1339). A person who had a caravan for the sale of goods stationed in a market place near what was described as a footpath, over which a crowd collected and obstructed the passage:—*Held*, that he was not guilty of an offence against this clause (*Ball v. Ward* (1875), 40 J. P. 213; 33 L. T. 170; 26 Digest 416, 1351). An obstruction is not caused by persons stopping and talking in the street, unless it is done wilfully and pertinaciously (*Wemyss v. Black* (1881), 8 R. (Ct. of Sess.) J., 25). An indictable obstruction may be caused by attracting a crowd by means of pictures, etc., in shop windows (*R. v. Carlile* (1834), 6 C. & P. 636; 26 Digest 428, 1477; and see 46 J. P. 19). A street preacher who collected a crowd in a highway was held rightly convicted under the Highway Act, 1835, s. 72 (9 Halsbury's Statutes 86), though there was room outside the crowd for foot passengers and vehicles to pass and repass (*Homer v. Cadman* (1886), 50 J. P. 454; 55 L. J. M. C. 110; 26 Digest 416, 1347. And see *Back v. Holmes* (1887), 51 J. P. 693; 57 L. J. M. C. 37; 26 Digest 416, 1348; *Ex parte Lewis* (1888), 21 Q. B. D. 191; 52 J. P. 773; 26 Digest 318, 500; *Burden v. Rigler*, [1911] 1 K. B. 337; 75 J. P. 36; 26 Digest 318, 503). A person who by carrying on a theatre causes a crowd to assemble and obstruct the highway, thereby creating a nuisance to private adjoining owners, is answerable for the obstruction if it be the necessary result of his acts, even though it be not his actual object (*Lyons, Sons & Co. v. Gulliver and Capital Syndicate, Ltd.*, [1914] 1 Ch. 631; 78 J. P. 98; 26 Digest 428, 1475). There is no difference of principle in this respect between outdoor and indoor entertainments (*Barber v. Penley*, [1893] 2 Ch. 447; 26 Digest 428, 1473, and see *Wagstaff v. Edison Bell Phonograph Corporation, Ltd.* (1893), 10 T. L. R. 80). A person riding a bicycle on a footpath by the side of a public road was held rightly convicted under an Irish Act (S. J. (Ireland) A., 1851, s. 13) of obstructing the free passage of foot passengers, although no evidence was produced of any foot passengers having been actually obstructed (*McKee v. McGrath* (1892), 30 L. R. Ir. 41). See also *R. v. Simpson*, Times, January 23rd, 1895. Where there is a public way, though it may only be a bridleway or footway, the public are entitled to use the full width of it, though it may be a private way for carriages (*Pullen v. Deffel*, [1891] W. N. 39; 64 L. T. 134; 26 Digest 315, 477). But the presumption applicable to an ordinary public highway bounded by fences is not applicable to a public footpath which passes through a lane of irregular shape and of varying breadth between the fences. In such a case there is no presumption that the public right extends over the whole space between the fences (*Ford v. Harrow U. D. C.* (1903), 67 J. P. 248; 83 L. T. 394; 26 Digest 215, 469). Persons using a traction engine and trucks on a highway six hours daily for seven weeks cannot be found guilty on indictment for a nuisance, unless they create a substantial obstruction and occasion delay and inconvenience to the public substantially greater than would have been caused by horses and carts (*R. v. Chittenden* (1885), 49 J. P. 503; 15 Cox, C. C. 725; 26 Digest 430, 1497). This clause will not apply to a place like a mews, which is not a street, and is only dedicated to the public subject to certain restrictions arising from its use (*Vestry of Chelsea v. Stoddard* (1879), 43 J. P. 182; 26 Digest 308, 399). The cases decided with reference to the Highway Act, 1835, s. 72, should be referred to in illustration of this clause, and see *Nuttall v. Pickering*, [1913] 1 K. B. 14; 77 J. P. 30; 26 Digest 438, 1555.

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As to claims to erect booths, etc., on highways during a fair, see *Simpson v. Wells* (1872), L. R. 7 Q. B. 214; 36 J. P. 774; 26 Digest 441, 1573; a claim to expose goods for sale on market day, *R. (Kennedy) v. County Cork J.J.*, [1913] 2 I. R. 391; 33 Digest 533, *k*; a claim by an innkeeper to allow his guest's carriage to remain in the highway, *Gerring v. Barfield* (1864), 28 J. P. 615; 26 Digest 441, 1585; holding a fair on a highway, *Elwood v. Bullock* (1844), 6 Q. B. 383; 8 J. P. 473; 26 Digest 441, 1577; *R. v. Smith* (1802), 4 Esp. 111; 26 Digest 441, 1581. To allow trees to grow over a highway is not a wilful obstruction (*Walker v. Horner* (1876), 1 Q. B. D. 4; 39 J. P. N. 773; 26 Digest 416, 1344). Nor is there any liability under the Highway Acts on an occupier of land for failing to light a tree which has fallen across a road or to warn passengers of the obstruction thereby caused (*Hudson v. Bray*, [1917] 1 K. B. 520; 81 J. P. 105; 26 Digest 416, 1349). But any unreasonable and unnecessary use of a highway is an obstruction, *e.g.* leaving a horse-van and ploughing gear standing by the side of a highway (*Harris v. Mobbs* (1878), 3 Ex. D. 268; 42 J. P. 759; 26 Digest 437, 1545); or leaving a roller (*Wilkins v. Day* (1883), 12 Q. B. D. 110; 48 J. P. 6; 26 Digest 437, 1546); or a motor car (*Macfarlane v. Colam*, [1908] S. C. 56) so as to frighten horses; leaving a heap of earth and refuse by the side of a highway, so as to frighten horses (*Brown v. Eastern and Midlands Rail. Co.* (1889), 22 Q. B. D. 391; 53 J. P. 342; Digest Supp.). As to obstructions caused by the erection of barbed wire fences by the side of a highway, see Barbed Wire Act, 1893, *post*, p. 4873; *Stewart v. Wright* (1893), 9 T. L. R. 480; 7 Digest 286, 153; *Collen v. Ellis* (1893), 32 L. R. Ir. 491. As to the liability of a highway surveyor for leaving heaps of stones on a highway, see *Hardcastle v. Bielby*, [1892] 1 Q. B. 709; 56 J. P. 549; 26 Digest 413, 1327. See also note (t), *infra*.

As to the liability of a landowner whose soil slips from the banks upon the highway, see *Gully v. Smith* (1883), 12 Q. B. D. 121; 48 J. P. 309; 26 Digest 416, 1346.

(g) There is sometimes a strip of land between the footway and the carriageway which is not dedicated to the public as part of the street. This clause would not affect the right to place goods, etc., upon it. See *Le Neve v. Mile End Old Town Vestry* (1858), 8 E. & B. 1054; 22 J. P. 657; 26 Digest 443, 1594; *R. v. Wigan J.J.* (1879), 43 J. P. Jo. 220; *Jones v. Mathews* (1885), 1 T. L. R. 482; 26 Digest 444, 1599; *Hitchman v. Watt* (1894), 58 J. P. 720; 26 Digest 444, 1601. But, in general, if a person asserts the right to obstruct the way by virtue of a qualified dedication he must prove it. See *Spice v. Peacock* (1875), 39 J. P. 581; 26 Digest 443, 1597; *Whittaker v. Rhodes* (1881), 46 J. P. 182; 26 Digest 443, 1598; *Openshaw v. Pickering* (1912), 77 J. P. 27; 26 Digest 296, 278. But in such cases it is for the justices to determine whether or not the place is a street (*R. v. Young* (1883), 47 J. P. 519; 52 L. J. M. C. 55; 26 Digest 458, 1743; *Leicester Sanitary Authority v. Holland, ante*, p. 4231). As to projections causing inconvenience to passengers, see the Towns Improvement Clauses Act, 1847, s. 69, *ante*, p. 4204; and compare the cases of *Wyatt v. Gems*, [1893] 2 Q. B. 225; 57 J. P. 665; 26 Digest 424, 1437; and *Winsborrow v. London Joint Stock Bank, Ltd.* (1903), 67 J. P. 289; 88 L. T. 803; 26 Digest 424, 1438. As to what are extenuating circumstances which will justify the dismissal of the summons, see *Dunning v. Trainer* (1909), 73 J. P. 400; 101 L. T. 421; 26 Digest 458, 1750.

(r) As applied to costermongers there must be a real and substantial annoyance in fact in order to justify a conviction (*R. v. Francis* (1899), 63 J. P. 469; 68 L. J. Q. B. 609; 26 Digest 424, 1434) and as to the meaning of the word costermonger, see *Baker v. Bradley* (1910), 74 J. P. 341; 103 L. T. 253; 26 Digest 423, 1428.

(s) As to the right of the occupier of premises to have free access to the highway for his goods, even though in taking these across the footway he injures it, see *St. Mary, Newington, Vestry v. Jacobs* (1871), L. R. 7 Q. B. 47; 36 J. P. 119; 26 Digest 325, 587. See also *Le Neve v. Mile End Old Town, supra*; *Rowley v. Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97; 26 Digest 308, 407; and *Curtis v. Geeves* (1930), 94 J. P. 71; 28 L. G. R. 103; Digest Supp. Sometimes, however, a local Act forbids certain acts which interrupt the use of a footway, *e.g.*, unloading coal during certain hours. See *Fletcher v. Fields*, [1891] 1 Q. B. 790; 55 J. P. 502; 26 Digest 424, 1436.

(t) An iron pole and a canvas flag hanging therefrom do not constitute a "sign" within the meaning of a local Act (*Goldstraw v. Jones* (1906), 71 J. P. 22; 96 L. T. 30; 26 Digest 565, 2595). By s. 51 of the Road Traffic Act, 1930 (23 Halsbury's Statutes 648), it is an offence to place or cause to be placed ropes, wires or other apparatus across a highway or any part thereof in such a manner as to be likely to cause danger to persons using the highway, except upon proof that all necessary means to give adequate warning of the danger have been taken. See also P. H. A., 1925, ss. 25, 26, Vol. V., *post*.

(u) A similar clause in a Scotch Act was held not to apply to the case of a prostitute accosting men from the window of a house (*Ford v. Linton* (1879), 6 R. (Ct. of Sess.) (J. C.) 49). As to the meaning of the expressions "prostitute" and "prostitution," see *R. v. De Munck*, [1918] 1 K. B. 635; 82 J. P. 160; 15 Digest 850, 9337.

(z) Note that the offence here described must be committed in a street. But the offence may be the subject of indictment, though not committed in a public place (*R. v. Wellard* (1884), 14 Q. B. D. 63; 49 J. P. 296; 15 Digest 746, 8051).

(y) Compare the provisions of the Vagrancy Act, 1824, ss. 3, 4. The Obscene Publication

**Note to
Section 28.**

Act, 1857, contains other provisions to prevent the sale of obscene books, pictures, prints, and other articles. See *R. v. Hicklin* (1868), L. R. 3 Q. B. 360; *S. C. sub nom. Scott v. Wolverhampton, JJ.*, 32 J. P. 533; 14 Digest 437, 4606; *Steele v. Brannan* (1872), L. R. 7 C. P. 261; 36 J. P. 360; 14 Digest 52, 181, as to what are obscene books, etc. See also the Indecent Advertisements Act, 1889.

A byelaw made under s. 46 of the Tramways Act, 1870, *post*, p. 4295, that no person shall swear or use obscene or offensive language whilst in or upon any carriage was held not *ultra vires* although this section was in force also in the same city (*Gentel v. Rapps*, [1902] 1 K. B. 160; 66 J. P. 117; 43 Digest 349, 85). A byelaw forbidding the use of indecent language in any street or public place to the annoyance of passengers cannot be held to apply to such language used in a public house and heard only by persons present therein (*Russon v. Dutton* (No. 2) (1911), 75 J. P. 209; 104 L. T. 601; 38 Digest 166, 114).

(z) This is practically abrogated as to fireworks by the Explosives Act, 1875, s. 80 (8 Halsbury's Statutes 431). See as to blasting in a quarry (*Murray v. Keith* (1895), 22 R. (Ct. of Sess.) (J. C.) 17). A person may also be indicted at common law or under 2 Edw. 3, c. 3, for going about armed (*R. v. Meade* (1903), 19 T. L. R. 540; 36 Digest 177, 224). For a case in which it was alleged that there had been an offence under s. 72 of the Highway Act, 1835, by a member of a shooting party, see *Lees v. Stone* (1919), 83 J. P. 163; 88 L. J. K. B. 1159; 26 Digest 434, 1523.

(aa) The mere fact of a man being instructed to deliver papers at a house is no answer to a complaint under this clause if the ringing, etc., is violent and at an unreasonable hour of the night (*Clarke v. Hoggins* (1862), 11 C. B. (N.S.) 545; Digest Supp.). By s. 1 of the Chimney Sweepers Act, 1894, any person who shall for the purpose of soliciting employment as a chimney sweeper knock at the houses from door to door, or ring a bell, or use any noisy instrument, or to the annoyance of any inhabitant thereof ring the door bell of any house, or cause anyone to do any of the acts aforesaid, shall be liable on summary conviction to a penalty not exceeding ten shillings for the first offence, and to a penalty not exceeding twenty shillings for any subsequent offence.

(bb) A claim of right does not necessarily oust jurisdiction under this section, for the court has to decide as a fact whether the place is a street (*R. v. Young*, *ante*, p. 4232).

(cc) It is an offence within this paragraph for a window cleaner to stand on a sill 1 ft. wide and 18 ft. above a public street, although he is provided with a safety belt and no particular passer-by is endangered (*West Riding Cleaning Co. v. Jowett*, [1938] 4 All E. R. 21; Digest Supp.).

(dd) See the cases collected in note (b) to s. 69, T. I. C. Act, 1847, *ante*, p. 4204.

(ee) This must be within the urban district. See *Flight v. Clarke* (1844), 13 M. & W. 155; 31 Digest 150, 2859. "Litter" includes handbills scattered about the street (*Hills v. Davies* (1903), 67 J. P. 198; 88 L. T. 464; 38 Digest 238, 670). As to laying rubble on a highway contrary to the Highway Act, 1835, s. 72, see *Smith v. Perry*, [1906] 1 K. B. 262; 70 J. P. 93; 26 Digest 414, 1338.

(ff) See also the P. H. A., 1936, s. 81, *ante*, p. 269.

29. Every person drunk in any street, and guilty of any riotous or indecent (a) behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police-station house, within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days (b).

Penalty on
drunken
persons, etc.
guilty of riotous
or indecent
behaviour.

(a) See note (u) to s. 28, *supra*.

(b) Where a charge is made under this clause, and the justices do not find that the defendant has been guilty of riotous conduct in a street, they cannot convict of simple drunkenness (*Martin v. Pridgen* (1859), 1 E. & E. 778; 28 L. J. M. C. 179; 30 Digest 99, 758). See also the Licensing Act, 1872, s. 12, and the Licensing Act, 1902, ss. 1—3.

And with respect to fires, be it enacted as follows :

Fires.

30. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act, shall be liable to a penalty not exceeding five pounds: Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for
wilfully setting
chimneys on
fire.

31. If any chimney accidentally catch or be on fire within the said limits, the person occupying or using the premises in which such chimney is situated shall be liable to a penalty not exceeding ten shillings: Provided always,

Penalty for
accidentally
allowing

Section 31.

chimneys to
catch fire.

that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was in nowise owing to omission, neglect, or carelessness of himself or servant (a).

(a) The occupier has not, as in London under s. 30 of the L. C. C. (General Powers) Act, 1900, any remedy over against the servant or other person by whose wilful neglect or default the chimney caught fire. See, generally, as to chimneys on fire, 61 J. P. 179.

[Ss. 32—33, dealing with provision of fire engines and firemen, have been repealed by the Fire Brigades Act, 1938, s. 30 (3), Sched. III., Vol. V., and 21 Halsbury's Statutes 602, 604; in the case of s. 33, this repeal did not take effect until July 29th, 1940.]

And with respect to places of public resort, be it enacted as follows (a) :

Places of
public resort

(a) Reference may be made to the provisions of the Refreshment Houses Act, 1860, as to refreshment houses, and of the Licensing Acts as to the prevention of offences against public order by drunkenness in the highways and disorderly conduct in licensed houses; also to the Gaming Act, 1845, and the Licensing Act, 1872, s. 75, as to public billiard rooms; the Gaming Act, 1845, and the Betting Act, 1853, as to gaming and betting houses. For these Acts, see 9 Halsbury's Statutes 922 *et seq.*, and 8 Halsbury's Statutes 1146, 1156. See also Pt. IV., of the P. H. A. A. A., 1890, *post*.

The following is a list of cases decided under the various statutes containing similar provisions, and also those decided under byelaws made pursuant to the Municipal Corporations Acts and other statutes dealing with good rule and government: *Hall v. Macwilliam* (lottery advertised in newspaper) (1901), 65 J. P. 742; 85 L. T. 239; 25 Digest 455, 445, decided under the Lotteries Act, 1823; *Bows v. Fenwick* (1874), L. R. 9 C. P. 339; 38 J. P. 440; 25 Digest 440, 354; *Galloway v. Maries* (1881), 8 Q. B. D. 275; 46 J. P. 326; 25 Digest 440, 355; *Henretty v. Hart* (1885), 13 R. (Ct. of Sess.) (J.) 9; 25 Digest 442, h; *Hawke v. Dunn*, [1897] 1 Q. B. 579; 61 J. P. 292; 25 Digest 437, 339; *Brown v. Patch*, [1899] 1 Q. B. 892; 63 J. P. 421; 25 Digest 440, 353; *Powell v. Kempton Park Racecourse Co.*, [1899] A. C. 143; 63 J. P. 260; 25 Digest 441, 358 (race-course cases); *Haigh v. Sheffield Town Council* (1874), L. R. 10 Q. B. 102; 39 J. P. 230; 25 Digest 443, 369 (athletic ground); *Eastwood v. Miller* (1874), L. R. 9 Q. B. 440; 38 J. P. 647; 25 Digest 437, 343 (pigeon shooting match); *Oldham v. Ramsden* (1875), 39 J. P. 583; 44 L. J. C. P. 309; 8 Digest 525, 129; *Downes v. Johnson*, [1895] 2 Q. B. 203; 59 J. P. 487; 8 Digest 525, 130; *Jackson v. Roth*, [1919] 1 K. B. 102; 83 J. P. 26; 8 Digest 525, 132 (clubs); *R. v. Cook* (1884), 13 Q. B. D. 377; 48 J. P. 694; 25 Digest 442, 363 (bicycle races); *Snow v. Hill* (1885), 14 Q. B. D. 588; 49 J. P. 440; 25 Digest 441, 356; *Snow v. Harris* (1885), 1 T. L. R. 325; 25 Digest 442, 361 (dog races); *Sims v. Pay* (1889), 53 J. P. 420; 58 L. J. M. C. 39; 25 Digest 444, 376; *Davis v. Stephenson* (1890), 24 Q. B. D. 529; 54 J. P. 565; 25 Digest 444, 370; *Hornaby v. Raggett*, [1892] 1 Q. B. 20; 56 J. P. 135; 25 Digest 444, 371; *M'William v. Dawson* (1891), 56 J. P. 182; 25 Digest 445, 387; *R. v. Preedy* (1888), 17 Cox, C. C. 433; 25 Digest 436, 337; *R. v. Worton*, [1895] 1 Q. B. 227; 25 Digest 445, 389; *Bradford v. Dawson*, [1897] 1 Q. B. 307; 61 J. P. 134; 25 Digest 445, 385; *Belton v. Busby*, [1899] 2 Q. B. 380; 63 J. P. 709; 25 Digest 445, 390; *Tromans v. Hodgkinson*, [1903] 1 K. B. 30; 67 J. P. 30; 25 Digest 446, 391; *Buxton v. Scott* (1909), 78 J. P. 133; 100 L. T. 390; 25 Digest 446, 393; *Bannister v. Clarke*, [1920] 3 K. B. 598; 85 J. P. 12; 25 Digest 451, 423 (public-house cases); *Liddell v. Loft-house*, [1896] 1 Q. B. 295; 60 J. P. 264; 25 Digest 438, 346; *McInaney v. Hildreth*, [1897] 1 Q. B. 600; 61 J. P. 325; 25 Digest 439, 347 (waste ground cases); *Bond v. Plumb*, [1894] 1 Q. B. 169; 58 J. P. 168; 25 Digest 443, 367; *Davis v. Stoddart*, [1902] 2 K. B. 21; 66 J. P. 469; 25 Digest 407, 108; *Gordon v. Chief Commissioner of Metropolitan Police*, [1910] 2 K. B. 1080; 74 J. P. 437; 25 Digest 450, 430; *R. v. Mortimer*, [1911] 1 K. B. 70; 75 J. P. 37; 25 Digest 448, 408; *Traynor v. Macpherson*, [1911] S. C. 54; *Hodgson v. Macpherson*, [1913] S. C. (J.) 68; 25 Digest 447, i; *Taylor v. Monk*, [1914] 2 K. B. 817; 78 J. P. 194; 25 Digest 447, 399; *Boulton v. Hunt* (1913), 77 J. P. 337; 25 Digest 447, 406; *Auld v. Logan* (1920), 57 So. L. R. 474; 25 Digest 448, a; *M'Lauchlan v. Cameron*, [1916] S. C. (J.) 14; 25 Digest 448, c (private house cases); *Stoddart v. Sagar*, [1895] 2 Q. B. 474; 59 J. P. 598; 25 Digest 463, 497; *Hawke v. Mackenzie*, [1902] 2 K. B. 225; 66 J. P. 709; 25 Digest 448, 410; *Leng & Co. v. Mackintosh*, [1914] S. C. (J.) 77 (coupon competitions); *R. v. Humphrey*, [1898] 1 Q. B. 875; 62 J. P. 409; 25 Digest 439, 349 (private road); *Cox v. Andrews* (1883), 12 Q. B. D. 126; 48 J. P. 247; 25 Digest 449, 412 (newspaper advertisement); *R. v. Brown*, [1895] 1 Q. B. 119; 59 J. P. 485; 25 Digest 446, 395 (telegrams); *R. v. Hobbs*, [1898] 2 Q. B. 647; 62 J. P. 551; 25 Digest 447, 401 (sweepstake); and *Stoddart v. Hawke*, [1902] 1 K. B. 353; 66 J. P. 67; 25 Digest 447, 403 (receipt of money outside the United Kingdom); *R. v. Peers*, *R. v. Brown* (1917), 81 J. P. 143; 86 L. J. K. B. 797; 25 Digest 426, 275; *Granata v. Mackintosh*, [1916] S. C. (J.) 48; *Peers v. Caldwell*, *Taylor v. Caldwell*, [1916] 1 K. B. 371; 25 Digest 426, 278; *Forté v. M'Alister*, [1917] 2 Ir. R. 387; 25 Digest 451, m; *Panetta v. McIntyre*, [1918] S. C. (J.)

10; 25 Digest 426, *e* (automatic machines in shops), all decided under the Betting Act, 1853.

Note to
Section 31.

The following cases were decided under the Gaming Houses Act, 1854:—*Jenks v. Turpin* (1884), 13 Q. B. D. 605; 49 J. P. 20; 25 Digest 423, 260; *Derby v. Bloomfield* (1904), 68 J. P. 391; 91 L. T. 99; 25 Digest 424, 264; *Barrett v. Flynn*, [1916] 2 Ir. R. 1; 25 Digest 454, *p* (clubs); *R. v. Davies*, [1897] 2 Q. B. 199; 25 Digest 422, 254 (private house); *Thompson v. Mason* (1904), 68 J. P. 270; 90 L. T. 649; 25 Digest 425, 272; *Roberts v. Harrison*, [1909] W. N. 163; 73 J. P. 439; 25 Digest 425, 273; *Pessers, Moody, Wraith and Gurr, Ltd. v. Catt* (1913), 77 J. P. 429; 29 T. L. R. 381; 25 Digest 426, 276; *Donaghy v. Walsh*, [1914] 2 Ir. R. 261; *Forsythe v. Ross*, [1919] 2 Ir. R. 335; *Di Carlo v. McIntyre*, [1914] S. C. (J.) 60 (slot machines); and *Morris v. Godfrey* (1912), 76 J. P. 297; 106 L. T. 890; 25 Digest 424, 267 (whist drive).

For cases decided under the Licensing Act, 1872, see *Bond v. Evans* (1888), 21 Q. B. D. 249; 52 J. P. 613; 25 Digest 431, 305 (skittle alley), and *Dyson v. Mason* (1889), 22 Q. B. D. 351; 53 J. P. 262; 25 Digest 422, 251 (skittle pool); and under the Betting Act, 1874, *Hawke v. Mackenzie*, [1902] 2 K. B. 225; 66 J. P. 709; 25 Digest 448, 410. See also *Stead v. Ackroyd*, [1911] 1 K. B. 57; 74 J. P. 482; 25 Digest 433, 316 (raccourse), decided under the Street Betting Act, 1906, and *Taylor v. Wilson* (1911), 76 J. P. 69; 106 L. T. 44; 25 Digest 443, 366 (public-house), decided under the Licensing (Consolidation) Act, 1910.

For cases decided under the Vagrancy Acts, 1868 and 1873 (12 Halsbury's Statutes 947), see *Tollett v. Thomas* (1871), L. R. 6 Q. B. 514; 35 J. P. 359; 25 Digest 434, 322; *Lester v. Quesied* (1901), 66 J. P. 54; 85 L. T. 487; 25 Digest 435, 324 (games of chance); and *Langrish v. Archer* (1882), 10 Q. B. D. 44; 47 J. P. 295; 25 Digest 433, 312 (railway carriage).

For a case decided under the Refreshment Houses Act, 1860, s. 32, see *Bracchi Brothers v. Rees* (1915), 79 J. P. 479; 25 Digest 426, 277.

For cases decided under the Lotteries Acts, see *Bartlett v. Parker*, [1912] 2 K. B. 497; 76 J. P. 280; 25 Digest 455, 447; *Minty v. Sylvester* (1915), 79 J. P. 543; 84 L. J. K. B. 1982; 25 Digest 455, 448; *Bottomley v. Director of Public Prosecutions* (1915), 79 J. P. 153; 84 L. J. K. B. 354; 25 Digest 458, 463; *Scott v. Director of Public Prosecutions*, [1914] 2 K. B. 868; 78 J. P. 267; 25 Digest 465, 506; *Dew v. Director of Public Prosecutions* (1920), 85 J. P. 81; 89 L. J. K. B. 1166; 25 Digest 458, 464.

Reference may be made to the following cases decided under byelaws dealing with streets and public places:—*Burnett v. Berry*, [1896] 1 Q. B. 641; 60 J. P. 375; 25 Digest 435, 326; *Godwin v. Walker* (1896), 12 T. L. R. 367; 60 J. P. N. 308; *Jones v. Walters* (1898), 62 J. P. 374; 78 L. T. 167; 25 Digest 435, 329; *Kitson v. Ashe*, [1899] 1 Q. B. 425; 63 J. P. 325; 25 Digest 436, 331; *White v. Morley*, [1899] 2 Q. B. 34; 63 J. P. 550; 25 Digest 436, 330; *Thomas v. Sutters*, [1900] 1 Ch. 10; 63 J. P. N. 724; 25 Digest 435, 327; *Hickey v. Hay* (1900), 65 J. P. 232; 25 Digest 435, 328; *Slowe v. Threshie* (1901), 3 F. (J.) 73; *Airton v. Scott* (1909), 73 J. P. 148; 100 L. T. 393; 25 Digest 436, 334.

34. Every victualler or keeper of any public-house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors, by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public-house or place wherein he carries on his business any constable during any part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty not exceeding twenty shillings (*a*).

Penalty on
victuallars, etc.
harbouring
constables
while on
duty.

(*a*) A similar clause is contained in the Licensing (Consolidation) Act, 1910, s. 78 (9 Halsbury's Statutes 1029), as to which see *Mullins v. Collins* (1874), L. R. 9 Q. B. 292; 38 J. P. 629; 30 Digest 92, 708; *Somerset v. Hart* (1884), 12 Q. B. D. 860; 48 J. P. 327; 25 Digest 431, 304; *Newman v. Jones* (1886), 17 Q. B. D. 132; 50 J. P. 373; *Sherras v. De Rutzen*, [1895] 1 Q. B. 918; 59 J. P. 440; 30 Digest 92, 709.

35. Every person keeping any house, shop, room, or other place of public resort, within the limits of the special Act, for the sale or consumption of refreshments of any kind, who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises shall, for every such offence, be liable to a penalty not exceeding five pounds (*a*).

Penalty on
coffee-shop
keepers, etc.
harbouring
disorderly
persons.

(*a*) See s. 76 of the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 1028), and s. 10 of the Prevention of Crimes Act, 1871 (4 Halsbury's Statutes 675). The keeper of a licensed alehouse is not exempt from the operation of this clause (*Cole v. Coulton* (1860), 2 E. & E. 695; 24 J. P. 596; 30 Digest 93, 715). It is not unlawful to supply prostitutes, etc., with refreshments, nor does the mere doing so amount to permitting them to assemble.

**Note to
Section 35.**

See *Greig v. Bendeno* (1858), E. B. & E. 133; 27 L. J. M. C. 294; *Purkis v. Huxtable* (1859), 1 E. & E. 780; 28 L. J. M. C. 221; 33 Digest 419, 1303; *Whitfield v. Bainbridge* (1866), 30 J. P. 644; 30 Digest 93, 718; *Parker v. Green* (1862), 2 B. & S. 299; 26 J. P. 247; 30 Digest 93, 714; *Belasco v. Hannant* (1862), 3 B. & S. 13; 26 J. P. 823; 30 Digest 93, 712; *Wilson v. Stewart* (1863), 3 B. & S. 913; 27 J. P. 661; 30 Digest 93, 716; *Cole v. Coulton* (1860), 2 E. & E. 695; 24 J. P. 596; 30 Digest 93, 715; *Allen v. Whitehead*, [1930] 1 K. B. 211; 94 J. P. 17; Digest Supp. A meeting to get up a subscription for a convicted thief's family, several thieves being in the company, is an assembly of thieves such as is forbidden by the Prevention of Crimes Act, 1871, s. 10, and presumably by this section (*Marshall v. Fox* (1871), L. R. 6 Q. B. 370; 35 J. P. 631; 30 Digest 92, 710).

Penalty on
persons keeping
places for bear-
baiting, cock
fighting, etc.

36. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place, for the purpose of fighting, baiting, or worrying any animal shall be liable to a penalty of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month; and the commissioners may, by order in writing, authorise the superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty not exceeding five shillings, and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequence to which he is liable for the nuisance thereby occasioned (a).

(a) See, generally, as to cruelty to animals, the Protection of Animals Act, 1911, as amended by the Protection of Animals (Amendment) Act, 1927 (1 Halsbury's Statutes 389); and as to "baiting," see *Pitts v. Millar* (1874), L. R. 9 Q. B. 380; 38 J. P. 615; 2 Digest 287, 585.

*Hackney
carriages.*

And with respect to hackney carriages, be it enacted as follows (a):

(a) See also as to trams and their drivers, conductors, etc., the Tramways Act, 1870, s. 48, *post*, p. 4298. The provisions of this part of the Act, as contained in ss. 37, 40—52, 54, 58, 60—67, were applied to omnibuses by the Town Police Clauses Act, 1889, s. 4, *post*, p. 4785, but the provisions of the latter Act were repealed so far as they relate to public service vehicles by the Road Traffic Act, 1930, and it is doubtful how far they now have effect (see notes at *post*, p. 4784). By the P. H. A., 1925, s. 76, Vol. V., *post*, the sections above mentioned of this Act apply also to hackney carriages standing or plying for hire at a railway station or on railway premises, other than carriages belonging to or used by railway companies for conveying passengers or their luggage, but the whole of this group of sections were repealed as regards public service vehicles by the Road Traffic Act, 1930. The net effect is that the sections continue to apply to hackney carriages and to omnibuses in so far as these are not public service vehicles within the definition in s. 121 of the Act of 1930, Vol. V., *post*, i.e., broadly to horse-drawn vehicles and trolley vehicles.

See also, as to hackney carriages, s. 11 of the Roads Act, 1920, Vol. V., *post*.

Commissioners
may license
hackney
carriages.

37. The commissioners may from time to time license (a) to ply for hire within the prescribed distance (b), or if no distance is prescribed, within five miles from the general post office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description (c) adapted to the carriage of persons as they think fit.

(a) The possession of a revenue licence to let horses and carriages under the Stage Carriages Act, 1832 (19 Halsbury's Statutes 19), was held not to supersede the necessity of the proprietor of a hackney carriage having a licence under this Act (*Buckle v. Wrightson* (1864), 5 B. & S. 854; 29 J. P. 326; 42 Digest 851, 64). The local authority may require an applicant for a licence to attend in person (*Banton v. Davies* (1891), 56 J. P. 294; 66 L. T. 192; 42 Digest 852, 67). The local authority have a discretion to refuse the licence (see *Ex parte Mitchen* (1864), 5 B. & S. 585; 28 J. P. 438; 42 Digest 857, 110), but an applicant to whom a licence is refused can appeal to quarter sessions: *vide* s. 7 of the P. H. A. Act, 1890, *post*, p. 4804; *R. v. Essex J.J.*, *Ex parte Barking U. D. C.*, *post*, p. 4461. Further *mandamus* will issue if the discretion of the local authority is not exercised judicially (*R. v. Barry U. D. C.* (1900), 16 T. L. R. 565; 42 Digest 856, 96; *R. v. Brighton Corporation*, *Ex parte Thos. Tilling, Ltd.* (1916), 80 J. P. 219; 85 L. J. K. B. 1552; 42 Digest 856, 97). Upon application for an omnibus licence, it was held that the fares to be charged could not be taken into consideration (*R. v. Farnborough U. D. C.*, *Ex parte Aldershot District Traction Co., Ltd.*, [1920] 1 K. B. 234; 83 J. P. 290; 42 Digest 857, 100);

Note to
Section 37.

semble, however, this was because in the T. P. C. Act, 1889, *post*, p. 4784, parliament had manifested an intention of leaving the fares to be settled by supply and demand. With regard to hackney carriages, there is power in s. 68 of the present Act, *post*, p. 4246, to fix fares by byelaw, and it is submitted therefore that an attempt to do so by licence would be improper in case of a hackney carriage, equally as in case of an omnibus, the *Farnborough Case* was reviewed in a case under s. 14 (3) of the Roads Act, 1920 (since partially repealed) and the Minister of Transport was held entitled upon appeal to take the question of fares into consideration (*R. v. Minister of Transport, Ex parte H. C. Motor Works, Ltd.*, [1927] 2 K. B. 401; 91 J. P. 83; 42 Digest 857, 101). In that case TALBOT, J., expressed the view that the decision in the *Farnborough Case*, *supra*, only decided that an authority cannot in dealing with licences do that indirectly which it cannot do directly, viz., fix the fares to be charged by omnibuses. In *R. v. Bradford Corporation, Ex parte Minister of Transport*, [1926] 90 J. P. 140; 135 L. T. 227; 42 Digest 856, 99, it was held that conditions might be attached to the grant of a license under this section. But as to the metropolis, see *R. v. Metropolitan Police Commissioner, Ex parte Holloway*, [1911] 2 K. B. 1131; 75 J. P. 490; 42 Digest 857, 108, a decision which overrules *R. v. Metropolitan Police Commissioner, Ex parte Pearce* (1910), 75 J. P. 85; 80 L. J. K. B. 223; 42 Digest 857, 107. In the case of *R. v. Metropolitan Police Commissioner, Ex parte Randall* (1911), 75 J. P. 486; 27 T. L. R. 505; 42 Digest 857, 109, the court followed *R. v. Metropolitan Police Commissioner, Ex parte Pearce*, *supra*, which had not at that time been overruled. As to omnibuses within the London Traffic Area, see the London Traffic Act, 1924, and the London Passenger Transport Act, 1933, Vol. V., *post*. As to the discretion of the licensing authority where they have themselves a competing tramway, see *R. v. Blackpool Corporation* (1899), 63 J. P. 787; 21 M. C. C. 572. Where a licensing authority granted a licence to a taxi which exceeded the dimensions allowed by the byelaws, it was held that the authority had exceeded their jurisdiction (*R. (Ex parte Sloan) v. Belfast Corporation* (1923), 57 L. L. T. 71).

(b) That is, within the urban district. See s. 171 of the P. H. A., 1875.

(c) As to tramcars, see the Tramways Act, 1870, s. 48, *post*, p. 4298, and *Blackpool and Fleetwood Tramroad Co. v. Bailey*, [1920] 1 K. B. 380; 84 J. P. 1; 42 Digest 853, 75; and, as to omnibuses, see the Town Police Clauses Act, 1839, s. 4 (1), and note, *post*, p. 4785. A carriage similar to a tramcar and used to carry passengers at separate fares over a light railway by virtue of Provisional Orders made under the Light Railways Act, 1896, is not a hackney carriage within the meaning of the Town Police Clauses Act, 1847 (*Yorkshire (Woolen District) Electric Tramways, Ltd. v. Ellis*, [1905] 1 K. B. 396; 69 J. P. 67; 42 Digest 853, 74).

38. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance (a), and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act (b); and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach (c) used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act (d).

What vehicles
to be deemed
hackney
carriages.

Proviso as to
stage coaches.

(a) A hackney carriage while on the premises of a railway company, by their leave for the accommodation of passengers by their trains, is not plying for hire in a street; the stations are private property (*Case v. Storey* (1869), L. R. 4 Ex. 319; 33 J. P. 470; 42 Digest 859, 120; and see *Hole v. Digby* (1879), 27 W. R. 884; 38 Digest 344, 527). But the dictum of KELLER, C.B., in that case, that they were not then *plying for hire* in that they were not at the disposal of the public, was not followed in *Clarke v. Stamford* (1871), L. R. 6 Q. B. 357; 35 J. P. 662; 42 Digest 853, 77; and in *Allen v. Tunbridge* (1871), L. R. 6 C. P. 481; 35 J. P. 695; 42 Digest 853, 78, it was held that a brougham, the owner of which, by agreement with a railway company, attended at their station to await the arrival of trains for the conveyance of any passenger who chose to use it, and whose driver solicited passengers, was a hackney carriage *plying for hire*. And see *Foinett v. Clark* (1877), 41 J. P. 359; 42 Digest 854, 80. These conflicting decisions are now resolved by the P. H. A., 1925, s. 76, referred to in note (a), *ante*, p. 4236. Where the owner of omnibuses being refused a licence ran them regularly over the route for the use of the public free of charge, but with a box in each omnibus for voluntary contributions, the conductor being ready to give change if asked, it was held that the omnibuses were playing for hire

**Note to
Section 38.**

(*Cocks v. Mayner* (1893), 58 J. P. 104; 70 L. T. 403; 42 Digest 855, 87). Plying for hire in an open unenclosed piece of private ground to which the public have access, but over which there is no public right of way, is not plying for hire in a street (*Skinner v. Usher* (1872), L. R. 7 Q. B. 423; 36 J. P. 693; 42 Digest 861, 139). A piece of ground adjoining a railway station, and belonging to the company, metalled and separated from the street only by a gutter, was used as an approach to the station. Private carriages were allowed to stand there, but no hackney carriages, except those of the appellant, who had, by agreement with the company, the sole right of standing carriages there:—*Held*, that the plying for hire there was not plying for hire in a street (*Curtis v. Embery* (1872), L. R. 7 Ex. 369; 42 Digest 856, 93). In the city of E. was a square in front of a hotel, unenclosed, and where the public could pass freely, except when the hotel keeper's carriages stood there. The square was let with the hotel, and was used for the hotel cabs when plying for hire:—*Held*, that the square was part of the street (*Marks v. Ford* (1880), 45 J. P. 157; 42 Digest 861, 140). The words "used in standing or plying for hire" indicate the period of time during which a carriage is to be deemed a hackney carriage, and are not limited to the period during which it is actually standing or plying for hire in a street. Therefore, in executing a booked order, even if the number plate is covered up, the carriage does not cease to be a hackney carriage within the meaning of the Act, and the byelaws under s. 68 are still applicable to it (*Hawkins v. Edwards*, [1901] 2 K. B. 169; 65 J. P. 423; 42 Digest 862, 143). In a case under the Metropolitan Public Carriage Act, 1869 (19 Halsbury's Statutes 163), it was held that a charabanc which picked up in public streets only passengers who had previously booked seats and paid for tickets at a booking-office was not plying for hire in a particular street in which passengers were waiting (*Sales v. Lake*, [1922] 1 K. B. 553; 86 J. P. 80; 42 Digest 855, 90). Where, however, a charabanc picked up passengers who booked seats at a stopping place after the charabanc had left its starting point, but before its arrival at the stopping place, it was held to be plying for hire (*Greyhound Motors, Ltd. v. Lambert*, [1928] 1 K. B. 322; 91 J. P. 198; 42 Digest 855, 91).

Where return tickets were issued outside the prescribed distance which entitled the holders to return on any bus belonging to a member of an association of omnibus proprietors from within the prescribed distance, an omnibus picking up the holders of such tickets within the prescribed distance was held to be plying for hire (*Armstrong v. Ogle*, [1926] 2 K. B. 438; 90 J. P. 146; 42 Digest 854, 85). Where, however, the return ticket was available only on any bus belonging to the company by whom the ticket was issued, the case was held to fall within *Sales v. Lake*, *supra*, and the bus was held not to be plying for hire (*Leonard v. Western Services, Ltd.*, [1927] 1 K. B. 702; 91 J. P. 18; 42 Digest 854, 86). All these cases were considered and explained in *Griffin v. Grey Coaches, Ltd.* (1928), 93 J. P. 61; 27 L. G. R. 39; 42 Digest 855, 92. In that case it was held that a charabanc was plying for hire where tickets were purchased at a booking office prior to the arrival of the vehicle, but at the time of such booking the proprietors had a vehicle available and by means of advertisements at the booking office solicited persons to ride in the vehicle. See also *Att.-Gen. v. Sharp* (1929), 45 T. L. R. 628; 27 L. G. R. 764; Digest Supp.

(b) As to what is a hackney carriage apart from any statutory definition, see *Bateson v. Oddy* (1874), 38 J. P. 598; 43 L. J. M. C. 131; 42 Digest 853, 79.

(c) As to what is a stage coach, see *R. v. Ruscoe* (1838), 8 Ad. & El. 386; 42 Digest 851, 56; *Craik v. Wood*, [1921] S. C. (J.) 27; 42 Digest 851, 59 i. Reference may also be made to *Dennis v. Miles*, [1924] 2 K. B. 399; 88 J. P. 105; 42 Digest 858, 115; *Smith v. Mackintosh*, [1926] S. C. (J.) 15; 42 Digest 851, 56 ii; *Kirkby v. Minty*, [1929] 2 K. B. 165; 93 J. P. 176; Digest Supp.; and *M'Kee v. Weir*, [1929] S. C. (J.) 14; Digest Supp.

(d) The proviso was held to apply to an omnibus (*Cousins v. Stockbridge* (1865), 30 J. P. 166). The licence here referred to was an excise licence, now abolished by the Revenue Act, 1869. But though no licence can now be obtained the law officers of the Crown had advised that the exemption remained. But see now the provisions of the Town Police Clauses Act, 1889, *post*, p. 4784. An ordinary omnibus running along a fixed route was held to be a hackney carriage within the meaning of the Customs and Inland Revenue Act, 1888, s. 4 (16 Halsbury's Statutes 577) (*Hickman v. Birch* (1889), 24 Q. B. D. 172; 54 J. P. 406; 39 Digest 240, 146).

Fee to be paid
for licence.

39. For every such licence there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings (a).

(a) No fee is now payable in respect of the licensing of any vehicle (other than a tramcar to any county council, local or police authority (s. 14 (1), Roads Act, 1920, Vol. V., and 19 Halsbury's Statutes 98. As to the excise duty payable for hackney carriage licences, see Customs and Inland Revenue Act, 1884, s. 3 (now revoked).

Persons
applying for
licence to sign
a requisition.

40. Before any such licence is granted a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney

carriage (a) in respect of which such licence is applied for; and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such licence, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage; and any person who, on applying for such licence, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, shall be liable to a penalty not exceeding ten pounds.

Section 40.
Penalty for omissions, etc. in requisition.

(a) This includes a tramcar (see the Tramways Act, 1870, s. 48, *post*, p. 4298), and an omnibus (Town Police Clauses Act, 1889, s. 4 (1), *post*, p. 4785), but not a light railway car, see note (c), *ante*, p. 4237. As to the liability of the registered proprietor of a hackney carriage for the negligence of the driver, see *Bygraves v. Dicker*, [1923] 2 K. B. 585; 129 L. T. 688; 34 Digest 35, 120.

41. In every such licence shall be specified the name and surname and place of abode of every person who is a proprietor or part proprietor of the hackney carriage in respect of which such licence is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such licence which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

What shall be specified in the licences.

42. Every licence shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose; and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage; and any person may at any reasonable time inspect such book, without fee or reward.

Licences to be registered.

43. Every licence so to be granted shall be under the common seal of the commissioners, if incorporated, or, if not incorporated, shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners (a).

Licence to be in force for one year only.

(a) The licence may be for less than a year (Town Police Clauses Act, 1889, s. 5, *post*, p. 4785).

44. So often as any person named in any such licence as the proprietor or one of the proprietors, or as being concerned, either solely or in partnership with any person, in the keeping (a), employing, or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing, signed by him, to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such licence at the office of the commissioners, who shall by their clerk or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such licence as aforesaid as the proprietor, or one of the proprietors, of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode and neglects or wilfully omits to give notice of such change, or to produce such licence in order that such memorandum as

Notice to be given by proprietors of hackney carriages of any change of abode.

Section 44. aforesaid may be endorsed thereon, within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty not exceeding forty shillings.

(a) For the meaning of this word as used in the Revenue Act, 1869, s. 27 (16 Halsbury's Statutes 251), see *London C. C. v. Fairbank*, [1911] 2 K. B. 32; 75 J. P. 356; 39 Digest 239, 135.

Penalty for
plying for hire
without a
licence.

45. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which such licence as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty not exceeding forty shillings (a).

(a) Proceedings for a penalty under this section must be instituted in accordance with s. 251 of the P. H. A., 1875, the operation of which has been saved as regards Acts directed to be construed with the 1875 Act (see *ante*, p. 728). The director of a rival omnibus company is not a "person aggrieved" within that section so as to be able to institute proceedings for a penalty under the section in the text in relation to the bus of another company (*Sheffield Corporation v. Kilsen*, [1929] 2 K. B. 322; 93 J. P. 135; Digest Supp.). A person plying for hire with a licensed carriage cannot be convicted if in the course of such plying for hire he obtains a private contract for the hire of an unlicensed carriage (*Cavill v. Amos* (1900), 64 J. P. 309; 42 Digest 855, 89).

A railway company provided a cab-stand upon a piece of ground which was their private property subject to a public right of footway alongside it which was metalled and paved like an ordinary street, and formed the side approach to one of their stations:—*Held* (1) that the piece of ground was not a "street" within the meaning of s. 3 of this Act; and (2) that the driver of a carriage for which a licence had not been obtained by standing for hire upon the cab-stand, which was within the district, committed no offence against the latter part of s. 45 (*Jones v. Short* (1900), 64 J. P. 247; 69 L. J. Q. B. 473; 28 Digest 274, 127). See now, however, s. 76 of the P. H. A., 1925, Vol. V., and 13 Halsbury's Statutes 1150, referred to in note (a), *ante*, p. 4236.

It was provided in a local Act that if the driver of any hackney carriage "shall be found standing or plying for hire" within the limits of the Act without a licence he should be liable to a penalty. There was no definition of "hackney carriage" in the Act. It was held that the words "hackney carriage" must be taken to mean a carriage exposed for hire to the public, whether standing in the public street or in a private yard (*Bateson v. Oddy* (1874), 38 J. P. 598; 43 L. J. M. C. 131; 42 Digest 853, 79). This case was cited in *Jones v. Short*, *supra*.

Under the Town Police Clauses Act, 1889, an omnibus becomes a hackney carriage for any of the purposes of this Act, and an omnibus plying for hire within the prescribed limits without a licence is within this section, although it does not stand or ply for hire in a street (*Birmingham and Midland Motor Omnibus Co. v. Thompson*, [1918] 2 K. B. 105; 82 J. P. 213; 42 Digest 853, 76; *Crack v. Holt* (1927), 91 J. P. 36; 25 L. G. R. 114; 42 Digest 854, 82). See also *Sales v. Lake* and other cases cited in note (a) to s. 38, *ante*, p. 4237.

A carriage similar to a tramcar and used to carry passengers at separate fares over a light railway by virtue of Provisional Orders made under the Light Railways Act, 1896, is not a hackney carriage within the meaning of this section (*Yorkshire (Woolen District) Electric Tramways, Ltd. v. Ellis*, [1905] 1 K. B. 396; 69 J. P. 67; 42 Digest 853, 74). See also the Town Police Clauses Act, 1889, s. 3, *post*, p. 4784.

Drivers not to
act without first
obtaining a
licence.

46. No person shall act as driver (a) of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance without first obtaining a licence from the commissioners, which licence shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same; and every such licence shall be in

force until the same is revoked, except during the time that the same may be suspended as after mentioned (b). **Section 46.**

(a) This includes the conductor of a tramcar (Tramways Act, 1870, s. 48, *post*, p. 4298), and of an omnibus (Town Police Clauses Act, 1889, s. 4 (2), *post*, p. 4785).

(b) The licence of the driver is only to be in force for one year. See P. H. A., 1875, s. 171, *post*. The local authority have a discretion as to granting a licence which must be properly exercised (*R. v. Barry D. C.* (1900), 16 T. L. R. 565; 42 Digest 856, 96). And they may require applicants to attend in person (*Banton v. Davies*, *ante*, p. 4236). There is the same right to appeal under this section as under s. 37; *vide note* (a) thereon, *ante*, p. 4236.

47. If any person acts as such driver (a) as aforesaid without having obtained such licence, or during the time that his licence is suspended, or if he lend or part with his licence, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such licence, or during the time that his licence is suspended, as hereinafter provided, every such driver and every such proprietor shall for every such offence respectively be liable to a penalty not exceeding twenty shillings. Penalty on drivers acting without licence, or proprietors employing unlicensed drivers.

(a) See note (a), to s. 46, *supra*.

48. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the licence of such driver, while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the licence of such driver, if he be then in his employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the licence of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him and to retain in his possession the licence of any driver while such driver remains in his employ, or if he refuse or neglect to produce such licence as aforesaid, such proprietor shall for every such offence be liable to a penalty not exceeding forty shillings (a). Proprietor to retain licences of drivers, and to produce the same before justices on complaint.

(a) In a case under the Metropolitan Public Carriage Act, 1869, it was held that the entry of a person's name as "proprietor" on the register of licences was not conclusive evidence that such person was the owner of a taxicab (*Kemp v. Elisha*, [1918] 1 K. B. 228; 82 J. P. 81; 42 Digest 858, 111). As to the liability of the registered proprietor for the negligence of a driver, see *Bygraves v. Dicker*, [1923] 2 K. B. 585; 129 L. T. 688; 34 Digest 35, 120.

49. When any driver (a) leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct, such proprietor shall forthwith return to such driver the licence belonging to him (b); but if such driver have been guilty of any misconduct, the proprietor shall not return his licence, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint, and if upon inquiry it appear that the licence of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such licence, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation. Proprietor to return licence to drivers except in case of misconduct.

(a) See note (a) to s. 46, *supra*.

(b) As to marking the licence, see *Hurrell v. Ellis* (1845), 2 C. B. 265; 15 L. J. C. P. 18; 42 Digest 852, 69; *Rogers v. Macnamara* (1853), 14 C. B. 27; 23 L. J. C. P. 1; 42 Digest 852, 70; *Norris v. Birch*, [1895] 1 Q. B. 639; 42 Digest 852, 73.

50. The commissioners may, upon the conviction for the second time of the proprietor or driver (a) of any such hackney carriage for any offence Revocation of licences of proprietors or drivers.

Section 50. under the provisions of this or the special Act, with respect to hackney carriages, or any byelaw made in pursuance thereof, suspend or revoke, as they deem right, the licence of any such proprietor or driver.

(a) This includes the conductor of a tramcar (Tramway Act, 1870, s. 48, *post*, p. 4298) and of an omnibus (Town Police Clauses Act, 1889, s. 4 (2), *post*, p. 4785).

Number of persons to be carried in a hackney carriage to be painted thereon.

51. No hackney carriage (a) shall be used or employed or let to hire, or shall stand or ply for hire, within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) "To carry _____ persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth; and the driver (b) of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

(a) See note (a) to s. 40, *ante*, p. 4239, and *Black v. Neilson*, cited in the note to s. 34 of the Tramways Act, 1870, *post*, p. 4288.

(b) See note (a) to s. 50, *supra*.

Penalty for neglect to exhibit the number, or for refusal to carry the prescribed number.

52. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver (a) of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty not exceeding forty shillings.

(a) See note (a) to s. 50, *supra*.

Penalty on driver for refusing to drive.

53. A driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse (a), to drive such carriage to any place (b) within the prescribed distance, or the distance to be appointed by any byelaw of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage (c), shall for every such offence be liable to a penalty not exceeding forty shillings.

(a) The driver may refuse to carry persons suffering from a notifiable disease. See the P. H. A., 1936, s. 160, *ante*, p. 427.

(b) Place here means any place to which the driver can get admittance, although it is private property (*Ex parte Kippins*, [1897] 1 Q. B. 1; 60 J. P. 791; 42 Digest 859, 121).

(c) These words were held to include a chauffeur in the employ of a motor-car proprietor who requested the driver of a hackney carriage to execute an order which had been given to him but which he could not fulfil (*Shepherd v. Hack* (1917), 81 J. P. 210; 42 Digest 859, 122).

Penalty for demanding more than the sum agreed for.

54. If the proprietor or driver of any such hackney carriage (a), or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare (b) allowed by this or the special Act, or any byelaw made thereunder, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon.

(a) As to omnibuses and conductors of omnibuses, see Town Police Clauses Act, 1889, s. 4 (1), (2), *post*, p. 4785.

(b) As to omnibus fares, see Town Police Clauses Act, 1889, s. 4 (3), *post*, p. 4785.

Agreement to pay more than the legal fare.

55. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any byelaw made under this or

the special Act, shall be binding on the person making the same; and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid: and if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty for such exaction not exceeding the sum of forty shillings; and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty be sooner paid.

Section 55.

56. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty not exceeding forty shillings if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon, according to the fare allowed by this or the special Act, or any byelaw made in pursuance thereof.

Agreements to carry passengers a discretionary distance for a fixed sum.

57. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the byelaws, then the sum of one shilling and sixpence for every half hour during which he is, so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away, or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made, or if such driver on the final discharge of such hackney carriage refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty not exceeding forty shillings (a).

Deposit to be made for carriages required to wait.

(a) There is no summary remedy outside the metropolis similar to the London Cab Act, 1896 (19 Halsbury's Statutes 168), for what is called "bilking" a cabman.

58. Every proprietor or driver of any such hackney carriage (a) who is convicted of taking as a fare (b) a greater sum than is authorised by any byelaw (c) made under this or the special Act shall be liable to a penalty not exceeding forty shillings, and such penalty may be recovered before one justice; and in the conviction of such proprietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved, . . . (d).

Penalty on proprietors, etc., convicted of overcharging.

(a) See note (a) to s. 54, *ante*, p. 4242.

(b) See note (b) to s. 54, *ante*, p. 4242.

(c) A byelaw made under a local Act prescribed fares chargeable by drivers of hackney carriages and distinguished between carriages drawn by one and two horses respectively. Special regulations were subsequently made which applied the byelaws and Acts of Parliament respecting hackney carriages to motor cabs, and prescribed a scale of charges for motor cabs. A driver of a motor cab demanded and was paid the sum registered by

**Note to
Section 58.**

his taximeter, which was in accordance with the scale of charges under the regulations, but in excess of that under the byelaw. On an appeal by the driver from a conviction for breach of the byelaw it was held that the byelaw did not apply to motor cabs and the conviction was quashed (*Gibson v. Brown* (1909), 31 M. C. C. 3). As to the right to charge a fare in excess of that authorised by the byelaw where the journey takes the driver outside the limits of the special Act, see *Ely v. Godfrey* (1922), 86 J. P. 82; 20 L. G. R. 268; 42 Digest 859, 126. An infant in arms is not a person in respect of whom an extra payment for an additional person can be demanded under byelaws (*Kemp v. Lubbock*, [1920] 1 K. B. 253; 83 J. P. 270; 42 Digest 860, 130).

(d) The remainder of this section permitting the party aggrieved to give evidence in proof of the offence was repealed by the S. L. R. A., 1894, as no longer necessary.

Penalty for
permitting
persons to ride
without consent
of hirer.

59. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty not exceeding twenty shillings.

No unauthorised
person to
act as driver.

60. No person authorised by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof; and no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor; and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty not exceeding forty shillings for every such offence.

Penalty on
drivers for
drunkenness,
furious driving
etc.

61. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty not exceeding five pounds; and in default of payment thereof the justices before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months (a).

(a) See note (a) to s. 54, *ante*, p. 4242. Persons convicted under s. 61 of being intoxicated while driving a hackney carriage may either in addition to or in substitution for any other penalty be ordered to enter into a recognisance with or without sureties to be of good behaviour under s. 3 of the Licensing Act, 1902 (9 Halsbury's Statutes 964).

Penalty in
case of carriages
being un-
attended at
places of public
resort.

62. If the driver of any such hackney carriage (a) leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty not exceeding twenty shillings for such offence; and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made, and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justice as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

(a) See note (a) to s. 54, *ante*, p. 4242.

Compensation
for damage
done by
driver.

63. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage (a) let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum, not exceeding five pounds,

as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages (b). Section 63.

(a) See note (a) to s. 54, *ante*, p. 4242.

(b) Compensation accepted under this section is a bar to a subsequent action for the same damage. See *Wright v. London General Omnibus Co.* (1877), 2 Q. B. D. 271; 41 J. P. 486; 34 Digest 134, 1043. Apart from this provision the proprietor of a cab may be responsible for damages caused by the negligence of the driver, the relationship between them being generally that of master and servant. See *Venables v. Smith* (1876), 2 Q. B. D. 279; 41 J. P. 551; 34 Digest 141, 1102; *Rayner v. Mitchell* (1877), 2 C. P. D. 357; 25 W. R. 633; 34 Digest 140, 1099; *King v. Spurr* (1881), 8 Q. D. B. 104; 46 J. P. 198; 34 Digest 35, 116; *Playle v. Kew* (1886), 2 T. L. R. 849; 34 Digest 141, 1103; *King v. London Improved Cab Co.* (1889), 23 Q. B. D. 281; 53 J. P. 788; 34 Digest 35, 117; *Keen v. Henry*, [1894] 1 Q. B. 292; 58 J. P. 262; 34 Digest 141, 1105; *Gates v. Bill*, [1902] 2 K. B. 38; 34 Digest 35, 119; *Bygraves v. Dicker*, [1923] 2 K. B. 585; 34 Digest 35, 120. As to the master's responsibility for the negligence of a volunteer called in to drive in case of emergency, see *Guilliam v. Twist*, [1895] 2 Q. B. 84; 59 J. P. 484; 34 Digest 142, 1117, or for that of a servant not acting within the scope of his authority, e.g., a conductor driving an omnibus to its starting place, see *Beard v. London General Omnibus Co.*, [1900] 2 Q. B. 530; 34 Digest 142, 1113; *Ricketts v. Thomas Tilling, Ltd.* (1913), 30 T. L. R. 132; on appeal, [1915] 1 K. B. 644; 34 Digest 142, 1114.

64. Any driver of any hackney carriage (a) who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty not exceeding twenty shillings. Penalty on drivers obstructing other drivers.

(a) See note (a) to s. 61, *ante*, p. 4244.

65. If the driver of any such hackney carriage (a) be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any byelaw made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable; and in default of payment of such compensation the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid. Compensation to drivers attending to answer complaints not substantiated.

(a) See note (a) to s. 61, *ante*, p. 4244.

66. If any person refuse to pay on demand to any proprietor or driver of any hackney carriage the fare (a) allowed by this or the special Act, or any byelaw made thereunder, such fare may, together with costs, be recovered before one justice as a penalty (b). Fare unpaid may be recovered as a penalty.

(a) See notes (a) and (b) to s. 54, *ante*, p. 4242.

(b) The amount of the fare is recoverable only as a civil debt under ss. 6 and 35 of the S. J. A., 1879 (*R. v. Kerswill (Torquay J.J.)*, [1895] 1 Q. B. 1; 59 J. P. 342; 42 Digest 859, 124).

67. Any person using any hackney carriage (a) plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty not exceeding five pounds, carriage. Penalty and compensation for damaging carriage.

Section 67. and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

(a) See note (a) to s. 54, *ante*, p. 4242.

Byelaws for
regulating
hackney
carriages.

68. The commissioners may from time to time (subject to the restrictions of this and the special Act) make byelaws for all or any of the purposes following; (that is to say,) (a)

For regulating the conduct of the proprietors and drivers (b) of hackney carriages plying within the prescribed distance in their several employments (c), and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling :

For regulating the manner in which the number of each carriage, corresponding with the number of its licence, shall be displayed :

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided (d) :

For fixing the stands (e) of such hackney carriages, and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance :

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares (f) :

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

(a) Model byelaws have been issued from the Ministry of Health under this section.

(b) A corporation made the following byelaw under a local Act (not requiring confirmation by a Minister): "The owner of every motor hackney carriage shall have fitted on such carriage an efficient lamp solely for the purpose of illuminating the dial of the taximeter, whenever it is necessary, in such a manner that the amount of fare recorded can be clearly seen from the inside of the carriage at all times, and every driver shall see that the lamp is properly lighted and adjusted and so kept." On a summons against a driver for breach of this byelaw, he was discharged upon the ground that the byelaw was invalid for uncertainty and unreasonableness, since it imposed two duties, one on the owner and one on the driver: that although the duty on the owner was to fit an efficient lamp for illuminating the dial "whenever it was necessary," these words did not appear in the part of the byelaw relating to the driver, and further that the byelaw did not contain adequate information as to the driver's duties. The Divisional Court held that the words "whenever it was necessary" applied both to the owner and the driver; that it required the lamp to be fitted by the owner and kept alight by the driver; that it was not unreasonable that the light should be solely for the purpose of lighting the dial, and therefore that the byelaw was valid (*Dunning v. Maher* (1912), 76 J. P. 255; 106 L. T. 846; 38 Digest 165, 103).

(c) A byelaw prohibiting the plying for hire in any street or place within the district (except on one of the stands fixed by the local board) was held to be valid though the actual locality of the stand was not set out in it. A driver on the sea beach passed a stand, and then got off his carriage and took up a fare:—*Held*, that he had been properly convicted of a breach of the byelaw (*Blackpool L. B. of Health v. Bennett* (1859), 4 H. & N. 127; 23 J. P. 198; 42 Digest 861, 136). For some years, however, the Local Government Board and Ministry of Health have declined to confirm byelaws as to stands and stopping places under this power which did not "fix" the actual situations, holding that, under modern conditions of traffic, the owners of vehicles and of adjoining property are alike entitled to the opportunity given by s. 184 of the P. H. Act, 1875 (now s. 250 of the L. G. Act, 1933, *ante*, p. 1104), of considering the stands, etc., before they are made operative—a view supported by the careful provision made by Parliament for antecedent publicity when a parking place is fixed under s. 68 of the P. H. Act, 1925, Vol. V., *post*.

A byelaw provided that "a person shall not in any public thoroughfare in the district tout for a hackney carriage." The respondent stood on a triangular piece of land at a street corner touting for hackney carriages, having received permission from the freeholders of the land to stand on it for the purpose of his business. The land was always open for the public to pass over, and the street (including the piece of land) had been declared a public highway. It was held that the fact that the piece of land in question belonged to private persons did not prevent his act from being an offence against the byelaw (*Dereham v. Strickland* (1911), 75 J. P. 300; 104 L. T. 820; 42 Digest 862, 144). As to loitering, see *Fairfoul v. Somerville* (1895), 23 R. (Ct. of Sess.) (J. C.) 6; *Murphy v. Neilson* (1901), 3 F. (Ct. of Sess.) 77. The following byelaw was held not to be *ultra vires* under similar words in the Edinburgh Municipal and Police Act, 1879, viz., "the driver of a hackney carriage shall not stand with the same longer than is necessary for taking up or setting down passengers on any part of the public streets not allowed as a hackney carriage stand except at the dismissal of theatres, assemblies, public meetings, and the like." And it was held that a driver was properly convicted under it, who waited outside an hotel for about an hour in pursuance of an arrangement between his employers and the hotel manager, but without being hired by anyone wishing to take the cab (*Mackenzie v. Somerville* (1900), 3 F. (Ct. of Sess.) (J.) 4).

(d) Byelaws made under this section prior to the introduction of motor vehicles provided in one part of a byelaw that no greater number of passengers should be conveyed in "any omnibus" than was there indicated, the subsequent part of the byelaw and other byelaws contained references to horse omnibuses, but it was held that the provision relating to "any omnibus" applied to motor omnibuses (*Neal v. Guy*, [1928] 2 K. B. 451; 92 J. P. 119; 42 Digest 858, 116). See also as to proceedings under the Railway Passenger Duty Act, 1842, for the overcrowding of motor omnibuses as stage carriages (*Dennis v. Miles*, [1924] 2 K. B. 399; 88 J. P. 105; 42 Digest 858, 115; *Kirkby v. Minty*, [1929] 2 K. B. 165; 93 J. P. 176; Digest Supp.; and *M'Kee v. Weir*, [1929] S. C. (J.) 14; Digest Supp.).

(e) Although the provisions of this Act now apply to hackney carriages standing at railway stations, a local authority cannot fix the site of a stand in any railway station or railway premises or in any yard belonging to a railway company except with the consent of that company (s. 76, P. H. A., 1925, Vol. V., *post*). In *R. v. Rawlinson* (1826), 6 B. & C. 23; 5 L. J. (o.s.) M. C. 16; 42 Digest 860, 133, it was held that the commissioners may remove a stand altogether if it be an obstruction, but this decision turned on a local Act empowering them to "direct and regulate" stands. Under the general law, they can remove a stand by "fixing," by byelaws, other stands (or repealing a byelaw which has fixed the first-named stand) irrespective of obstruction. As to stands for public service vehicles, see s. 90 (1), Road Traffic Act, 1930, *post*.

(f) See note (c) to s. 53, *ante*, p. 4243. *Ely v. Godfrey* (1922), 86 J. P. 82; 20 L. G. R. 268; 42 Digest 859, 126; and *Kemp v. Lubbock*, [1920] 1 K. B. 253; 83 J. P. 270; 42 Digest 860, 130. Tramway fares cannot be regulated by the refusal of licences until the tramway company adopt fares satisfactory to the local authority (*R. v. Farnborough U. D. C., Ex parte Aldershot District Traction Co., Ltd.*, [1920] 1 K. B. 234; 83 J. P. 290; 42 Digest 857, 100). See this case commented on in *R. v. Minister of Transport, Ex parte H. C. Motor Works, Ltd.*, [1927] 2 K. B. 401; 91 J. P. 83; 42 Digest 857, 101.

THE BURIAL ACT, 1857.

(20 & 21 VICT. c. 81) (a).

An Act to amend the Burial Acts.

[25th August, 1857.]

(a) The short title of this Act is as enacted by the Short Titles Act, 1896. The following sections are such as concern the appointment and duties of local authorities as burial boards. It is of course impossible to include in the Appendix all the provisions of the Burial Acts, for which reference should be made to Brooke Little's Law of Burials, 3rd edition. See also the Burial Act, 1860, *post*, p. 4252. See also the P. H. A., 1875, s. 343, *post*.

* * * * *

4. In case it appear to her Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a local board of health or improvement commissioners may, by order in council, be constituted a burial board.

Section 4. district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an Order in Council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for her Majesty, with the advice of her Privy Council, in case her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners; and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorisation of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the London Gazette, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848 (a).

11 & 12 Vict.
c. 63.

(a) For "local boards of health" and "improvement commissioners" read now "urban district councils."

Burial board
may be
established for
a district not
maintaining
its own poor,
and which has
had no separate
burial ground.

5. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid *and consecrated* (a) for any new parish or district created or to be created pursuant to the provisions of the New Parishes Act, 1843, the New Parishes Act, 1844, and the New Parishes Act, 1856, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district, (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable,) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, *and be entitled to the same fees* (a), and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, *and be entitled to the same fees* (a), in respect of such burials, as if the said burial ground were exclusively the

6 & 7 Vict. c. 37.
7 & 8 Vict. c. 94.
19 & 20 Vict.
c. 104.

burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial Acts, or any or either of them : Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

Section 5.

(a) The words here printed in italics were repealed by the Burial Act, 1900, s. 12, and Sched. I., *post*. See now ss. 1 and 3 of that Act, *post*, pp. 4990-1, as to consecration and fees.

* * * * *

27. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or voidable by reason of any defect or irregularity of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof ; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity or error.

Resolutions, etc. of vestries act to be void by reason of irregularity of notices, etc.

28. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts (a) or any of them, or under this Act.

Meaning of "burial board."

(a) These are the Burial Act, 1852 ; the Burial Act, 1853 ; the Burial Act, 1854 ; the Burial Act, 1855.

* * * * *

30. The hereinbefore recited Acts and this Act shall be construed together as one Act.

Recited Acts and this as one.

THE PUBLIC HEALTH ACT, 1858.

(21 & 22 VICT. c. 97) (a).

An Act for vesting in the Privy Council certain Powers for the Protection of the Public Health. [2nd August, 1858.]

1. [*Powers of General Board of Health under 18 & 19 Vict. c. 116, added to those of the Privy Council*] (b).

(a) This Act was made perpetual by the Public Health Act, 1859.

(b) Sections 1, 3, 5, and 6 are repealed by the S. L. R. A., 1893 (No. 1), the powers and duties of the Privy Council under those sections having been transferred to the L. G. B. by the Local Government Board Act, 1871, and now to the Minister of Health by the Ministry of Health Act, 1919, s. 3, *post*.

2. [*Certain powers in relation to Public Vaccination vested in the Privy Council*] (a).

(a) Repealed by the Vaccination Act, 1867, s. 1.

3. [*Privy Council may direct inquiries*] (a).

(a) See note (b) to s. 1, *supra*.

Section 4.

Privy Council
to appoint
medical officer,
etc.

4. The powers of appointing and removing a medical officer, vested in the General Board of Health under the General Board of Health Continuance Act, 1855, shall, upon the discontinuance of that board, be vested in the Privy Council (a); . . . and the Privy Council may also from time to time employ such other persons as they deem necessary for the purposes of this Act; and there shall be paid to the medical officer such salary not exceeding fifteen hundred pounds per annum, and to such other persons such remuneration and allowances, as the Treasury may direct; and such salary, remuneration, and allowances shall be paid out of such moneys as shall be provided by Parliament (b).

(a) The next clause of this section as it originally stood was repealed by the S. L. R. A., 1878.

(b) Section 4 is repealed by the S. L. R. A., 1875, in so far as it relates to the salary of the medical officer. The medical officer of the Privy Council was attached to the L. G. B., by the Local Government Board Act, 1871, s. 6 (see the Public Health Act, 1872, s. 38), and was transferred to the Minister of Health by the Ministry of Health Act, 1919, s. 6, *post*, p. 5194.

5. [*Medical officer to report annually as to the execution of this Act*] (a).

(a) See note (b) to s. 1, *ante*, p. 4249.

6. [*Reports to be laid before Parliament*] (a).

(a) See note (b) to s. 1, *ante*, p. 4249.

Exercise of
powers vested
in the Privy
Council, etc.

7. All powers vested in the Privy Council by this Act may be exercised by any three or more of the lords and others of the Privy Council, . . . (a) and all orders, regulations, directions, and acts of the Privy Council under this Act shall be sufficiently made and signified by a written or printed document, signed by one of the clerks of the Privy Council, or such officer as may be appointed by the Privy Council in this behalf; and all orders, regulations, directions, and acts made or signified by any written or printed document purporting to be so signed shall be deemed to have been duly made, issued, and done by the Privy Council; and every such document shall be received in evidence in all courts and before all justices and others without proof of the authority or signature of such clerk or other officer, or other proof whatsoever, until it be shown that such document was not duly signed by the authority of the Privy Council (b).

(a) Certain words are here repealed by the Board of Education Act, 1899, s. 1 (3).

(b) See also the Documentary Evidence Acts, 1868 and 1882, and *Tyrell v. Cole* (1919), 83 J. P. 53.

8. [*Proceedings for penalties under Vaccination Acts*] (a).

(a) Repealed by the Public Health Act, 1859.

Short title.

9. This Act may be cited as "The Public Health Act, 1858" . . .

THE PUBLIC IMPROVEMENTS ACT, 1860.

(23 & 24 VICT. c. 30.)

An Act to enable a Majority of Two Thirds of the Ratepayers of any Parish or District, duly assembled, to rate their District in aid of Public Improvements for general benefit within their District (a).

[3rd July, 1860.]

Ratepayers may
hold land, etc.,
for purposes of

1. It shall be lawful for the ratepayers of any parish (b) maintaining its own poor, the population of which, according to the last account from time to time

aken thereof by the authority of Parliament, exceeds five hundred persons, **Section 1.**
 o purchase or lease lands, and to accept gifts and grants of land, for the
 urpose of forming any public walk, exercise or play ground, and to levy rates forming public
 walks, etc. and
 levy rates for
 maintaining the
 same, etc.
 r maintaining the same, and for removal of any nuisances or obstruction
 o the free use and enjoyment thereof, and for improving any open walk or
 ootpath, or placing convenient seats, or shelters from rain, and for other
 urchases of a similar nature.

(a) This Act does not affect sanitary authorities other than those of boroughs, and it
 s in fact practically superseded by later enactments. It may, however, be adopted by
 ny rural parish. See s. 7 of the L. G. A., 1894.

It will be observed from s. 164 of the P. H. A., 1875, and s. 8 of the L. G. A., 1894, that
 district and parish councils may provide recreation grounds under those provisions. There
 may be some value in the distinct provision as to seats in open walks.

(b) See the definition of "parish" in R. and V. A., 1925, s. 68 (4), *ante*, p. 2234.

2. This Act may be adopted for any borough, or for any parish having a Adoption of
 Act.
 opulation of five hundred or upwards (according to the last account for the
 ime taken by authority of Parliament), in the same manner as the Baths and
 Washhouses Act, 1846, may be adopted in such borough or parish (a). 9 & 10 Vict.
 c. 74.

(a) The Baths and Washhouses Act, 1846, is no longer an adoptive Act (see *ante*, p. 1193).

3. Where the Act is adopted in a borough or in such a parish, the pro- Application of
 certain provi-
 sions of 9 &
 10 Vict. c. 74.
 visions of the Baths and Washhouses Act, 1846, for the purposes below
 specified, applicable in the like cases where that Act is adopted, shall take
 effect for the purposes of this Act, viz.: All the provisions concerning—

1. The authority by which and the manner in which the Act is to be carried
 into execution ;
2. The mode of providing the expenses of carrying the Act into execution
 (excluding the provisions for borrowing money for such expenses) ;
3. The appointment (in the case of a parish) of commissioners, the tenure
 of office and procedure, and the audit of their accounts ;
4. The powers of the councils and commissioners for the purposes of the
 Act (except the powers of borrowing money).

4. After the adoption of this Act it shall be lawful for the ratepayers in Ratepayers,
 after notice
 given, to rate
 parishes.
 meeting assembled to rate such parish to a separate rate, to be called the
 "Parish Improvement Rate"; provided, that such rate be agreed
 to by a majority of at least two-thirds (a) . . . of the ratepayers
 assembled at such meeting (b).

(a) The words "in value" here following were repealed by s. 89 of the L. G. A., 1894.

(b) The rate will now be raised as an additional item of the general rate under s. 2 (5),
 R. and V. Act, 1925, *ante*, p. 2122.

5. Corporate bodies shall be allowed to attend meetings to be held as Corporate
 bodies may
 attend and
 vote.
 aforesaid and to vote thereat by some person to be deputed by them for that
 purpose under their corporate seal.

6. Provided always, that previous to any such rate being imposed a sum One half of the
 estimated cost
 to be raised
 by private
 subscription.
 in amount not less than at least one half of the estimated cost of such pro-
 posed improvement shall have been raised, given, or collected by private
 subscription or donation.

7. Such rate shall not exceed sixpence in the pound (a).

Limit of rate.

(a) The maximum limit of the rate is increased to 8d. by s. 75 of the L. G. A., 1929, *post*,
 subject to the provisions of that section.

Section 4.

THE BURIAL ACT, 1860.

(23 & 24 VICT. c. 64)

An Act to make further provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.

[6th August, 1860.]

[Ss. 1—3 were repealed by the L. G. A., 1933, and the equivalent provisions are now contained in *ibid.*, ss. 188, 219, *ante*, pp. 1015, 1057.]

Consent of Secretary of State to appointment of burial board in certain cases.

4. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of her Majesty's principal Secretaries of State (a).

(a) See *R. v. Walcot, St. Swilhin, Overseers* (1862), 2 B. & S. 571; 26 J. P. 548; 7 Digest 541, 209. By s. 4 of the Burial Act, 1900, *post*, p. 4992, the powers and duties of the Secretary of State under this section were transferred to the L. G. B. and are now vested in the Minister of Health under the Ministry of Health Act, 1919, s. 3, *post*, p. 5191. For the mode of obtaining approval of the appointment of a burial board, see s. 1 of the Burial Act, 1871.

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

(23 & 24 VICT. c. 106) (a).

An Act to amend the Lands Clauses Consolidation Acts, 1845, in regard to Sales and Compensation for land by way of a Rentcharge, Annual Feu Duty or Ground Annual, and to enable her Majesty's principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.

[20th August, 1860.]

Part of section 10 of recited Act repealed.

1. So much of the tenth section of the Lands Clauses Consolidation Act, 1845, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed (b).

(a) See the Lands Clauses Consolidation Act, 1845, *ante*, p. 4102; and the Lands Clauses (Umpire) Act, 1883, *post*, p. 4664. The collective title of the Acts is now the Lands Clauses Acts.

(b) This section was repealed by the S. L. R. A., 1875, but it is retained here to explain the repeal effected by it. See the Lands Clauses Consolidation Act, 1845, s. 10, *ante*, p. 4109.

Powers in 8 & 9 Vict. c. 18, ss. 10, 11, to sell lands for a rentcharge, and to recover rentcharge, extended to all sales, etc. where parties are under disability.

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale, or entitled to such compensation, are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act (a).

(a) See these sections, *ante*, p. 4109; s. 3 relates to Scotland only. As to the removal of certain disabilities by the Property Acts of 1925, see note (a) to s. 7 of the 1845 Act at p. 4108, *ante*.

* * * * *

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, . . . hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided, that the amount of such annual rentcharge, . . . shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands, upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid by way of compensation for any damage that may be done to the said lands shall in all such cases be added to and shall form a part of the said rentcharge, . . . and that no fine, . . . premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge . . . made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

Section 4.

Amount of rentcharge to be settled in manner directed in 8 & 9 Vict. c. 18, s. 9, etc. (a).

(a) See the section, *ante*, p. 4108. Words relating to Scotland only are omitted from this and the following section.

The Law of Property Act, 1922, s. 39, provided that the power conferred by the Lands Clauses Consolidation Act, 1845, s. 10 (*ante*, p. 4109), to sell and convey land in consideration of an annual rentcharge shall extend to a tenant for life in like manner in all respects as if he had been entitled to dispose of the settled land absolutely, and accordingly s. 4 of the above Act shall not apply to such a sale. That section is, however, repealed by the Settled Land Act, 1925, which does not contain an identical provision though the same effect results from the combined operation of ss. 38 and 39, *ibid.* (17 Halsbury's Statutes 877, 878), and s. 9 and Sched. IX. of the Law of Property (Amendment) Act, 1924 (15 Halsbury's Statutes 169, 173).

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person, under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts only, for the purchase of any lands in consideration of the payment of a rentcharge . . . the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years purchase of any rentcharge, . . . so for the time being payable.

If lands are purchased by way of rentcharge, the borrowing powers of the promoters shall be reduced proportionally.

6. [Purchase of lands by municipal corporations] (a).

(a) The whole of this section is repealed, except as to Ireland, by the S. L. R. A., 1892, having been superseded as to England by certain provisions of the Municipal Corporations Act, 1882, Part V.

* * * * *

8. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, . . . in all matters in which it relates to the said Act . . . and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

This Act and 8 & 9 Vict. c. 18 to be construed together.

Short title.

Section 1.

THE TOWN GARDENS PROTECTION ACT, 1863.

(26 & 27 VICT. c. 13) (a).

An Act for the Protection of certain Garden or Ornamental Grounds in Cities and Boroughs. [4th May, 1863.]

Gardens in squares, etc. may be taken charge of by the Metropolitan Board of Works or other corporate authority, etc.

1. Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the Metropolitan Board of Works (b), where the same is in any place under their jurisdiction, except the city of London (where the provisions of this Act shall be carried into effect by the corporation of the said city), and the corporate authorities in any other city or borough, shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and, if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachment made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the Metropolitan Board of Works or corporate authority aforesaid shall, within six months after the notice hereinbefore mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the Metropolitan Board of Works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest, as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

(a) The short title of this Act is as enacted by the Short Titles Act, 1896. It is not absolutely incorporated by any of the P. H. A., but is referred to in the notes to s. 164 of the

P. H. A., 1875, *post*; and see *Tulk v. Metropolitan Board of Works*, there cited. The preamble and clause of enactment of this Act were repealed by the S. L. R. A., 1893 (No. 1).
 (b) Now the London C. C., see L. G. A., 1888, s. 40 (8).

**Note to
Section 1.**

Protection from
encroachment.

2 . . . (a). Where any right to require that any garden or ornamental ground as aforesaid be kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the Metropolitan Board of Works where the same is in any place under their jurisdiction, except the city of London, where the same shall be addressed to the corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said Metropolitan Board of Works or corporate authority to protect the right before mentioned, the said Metropolitan Board of Works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request; and then and thereupon the right of such person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such Metropolitan Board of Works or corporate authority, who shall be fully empowered, for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

(a) The preamble to this section reciting that it is expedient that the same should be protected from undue encroachment, is repealed by the S. L. R. A., 1893 (No. 1).

3. Any charge incurred by the Metropolitan Board of Works in the execution of this Act shall be deemed to be expenses of the said board for payment whereof provision is made by the Metropolis Management Act, 1855.

Expenses, how
to be defrayed.
18 & 19 Vict.
c. 120.

4. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter, byelaws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which byelaws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such byelaws, in all courts whatever; and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: Provided always, that such byelaws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justices in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any byelaws tendered to them for that purpose, and to allow or disallow the same as they think meet (a).

Byelaws for
management of
garden, etc.

(a) The power of making byelaws conferred by this section is extended to the trustees or other persons having the care and management of any open space within the meaning of the Open Spaces Act, 1906, who in pursuance of that Act admit to the enjoyment of the open space any persons not owning, occupying, or residing in any house fronting thereon. See s. 15 (3) of that Act, *post*.

5. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the

Penalty for
injuring garden.

Section 5. district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of A. B. and others.

Certain provisions of 18 & 19 Vict. c. 120, to be incorporated with this Act, and to apply to penalties within metropolitan district.
11 & 12 Vict. c. 43, to apply to penalties elsewhere.

6. The provisions contained in the two hundred and twenty-fifth, two hundred and twenty-sixth, two hundred and twenty-seventh, and two hundred and twenty-eighth sections of the Metropolis Management Act, 1855, shall be incorporated in this Act, and shall apply to any penalty or forfeiture imposed by this Act, or any byelaw made in pursuance thereof, in and for every matter or thing done or omitted to be done within the metropolitan district; and the Summary Jurisdiction Act, 1848, shall apply to every penalty or forfeiture imposed by this Act, or any byelaw made in pursuance thereof, or any matter or thing done or omitted to be done within any other part of England and Wales.

Act not to extend to property of the Crown, etc.

14 & 15 Vict. c. 95.

7. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to her Majesty in right of her Crown or of her Duchy of Lancaster, or any garden, ornamental ground, or other land for the time being under the management of the Commissioners of Works, or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of Parliament.

Extent of Act.

8. Nothing in this Act shall extend to Scotland or Ireland.

THE WATERWORKS CLAUSES ACT, 1863.

(26 & 27 VICT. c. 93) (a).

An Act for consolidating in one Act certain Provisions frequently inserted in Acts relating to Waterworks. [28th July, 1863.]

10 & 11 Vict. c. 17.

WHEREAS the Waterworks Clauses Act, 1847, was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act usually introduced into Acts of Parliament authorising the construction of certain waterworks:

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks, as for ensuring greater uniformity in the provisions themselves (b).

(a) See Waterworks Clauses Act, 1847, and note (a), *ante*, p. 4176.

(b) The clause of enactment was repealed by the S. L. R. A., 1893 (No. 1).

* * * * *

PRELIMINARY.

Short title.
10 & 11 Vict. c. 17.

1. This Act may be cited as the Waterworks Clauses Act, 1863; and the Waterworks Clauses Act, 1847, and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863.

2. This Act shall apply to any waterworks to which any special Act (a) hereafter passed and incorporating this Act relates; and every such special Act is hereinafter referred to as "the special Act." **Section 2.**

Terms used in this Act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847.

The provisions respecting the recovery of penalties contained in the last-mentioned Act shall be incorporated with this Act (b).

Application of Act and interpretation of terms.
10 & 11 Vict. c. 17.

(a) See the P. H. A., 1936, s. 120, *ante*, p. 368.

(b) Waterworks Clauses Act, 1847, s. 85. The procedure for recovery of penalties is that provided by the Railways Clauses Consolidation Act, 1845, ss. 140 *et seq.*, *ante*, p. 4153.

SECURITY OF RESERVOIRS.

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows: (a)

(a) See also the Reservoirs (Safety Provisions) Act, 1930, Vol. V., *post*.

3. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them.

Power for justices to inquire as to danger of reservoir.

4. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices for immediate repair.

5. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall, order the undertakers, within such period as the justices think reasonable and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices on undertakers to repair reservoir.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.

Order of justices on failure of undertakers to repair.

6. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the Schedule to this Act, with such variations as circumstances require.

Form of order.

7. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates,

Persons acting under order not trespassers, etc.

Section 7. or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

Order for pay-
ment of costs
and expenses.

8. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

Appeal by
undertakers.

8 & 9 Vict. c. 20.

9. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845 (*a*), are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the cause of appeal arises; and that court may, on the hearing of the appeal, either affirm or quash the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs, both of the original proceedings and of the appeal, as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.

(*a*) S. 157, *ante*, p. 4162.

Undertakers not
to be respon-
sible for con-
sequences of
order.

10. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties, liabilities, or obligations under the special Act, that may be occasioned by or result from the execution of any such order.

Application of
Act, etc.

11. The present provisions with respect to the security of reservoirs shall apply to England . . . (*a*).

(*a*) The rest of s. 11 relates to Scotland and Ireland only.

SUPPLY OF WATER.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Supply for other
than domestic
purposes.

12. A supply of water for domestic purposes (*a*) shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose.

(*a*) See the Waterworks Clauses Act, 1847, s. 53, *ante*, p. 4190, and the notes thereto, and compare *Smith v. Müller*, [1894] 1 Q. B. 192; 58 J. P. 167; 24 Digest 905, 50.

Want of supply
for other than
domestic pur-
poses, when
excused.

13. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such

water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident (a). Section 13.

(a) This section exempts the undertakers from penalties or damages for not supplying water under any agreement to supply it for other than domestic purposes, if the want of such supply arises from frost, unusual drought or other unavoidable cause or accident. But this section is expressly limited to the case of water supplied under an agreement, and does not apply to water supplied compulsorily. *Per CAVE, J., in Sheffield Waterworks Co. v. Carter* (1882), 8 Q. B. D. 632, at p. 644; 46 J. P. 548; 43 Digest 1091, 230.

14. Where the undertakers are authorised by the special Act (a) to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress . . . for rent of the premises where the same are used, or be attached or taken in execution under any process of any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be (b). Power to let meters, etc. for hire.

(a) Section 127 of the P. H. A., 1936, *ante*, p. 381, authorises a supply by meter where the local authority are the undertakers.

(b) Words relating to Scotland only are omitted from this and the following section. An obligation on the part of a consumer to provide a meter cannot be implied from this section (*Sheffield Waterworks Co. v. Carter* (1882), 8 Q. B. D. 632; 46 J. P. 548; 43 Digest 1091, 230). As to the duty of a consumer to provide some means of measuring the water, see *Sheffield Waterworks Co. v. Bingham* (1883), 25 Ch. D. 443; 52 L. J. Ch. 624; 43 Digest 1092, 231. See these cases more fully set out, *ante*, p. 392.

See further as to the right to demand a supply by meter, *Cooke, Sons & Co. v. New River Co.*, *ante*, p. 4188.

15. The officers of the undertakers may enter any house, building, or lands, to, through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice . . . this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon (a). Power of entry for ascertaining quantity consumed by meter and for removing meters, etc.

(a) See also the P. H. A., 1936, ss. 133-135, *ante*, p. 392.

PROTECTION OF WATER.

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows:

16. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the Power to cut off water in certain cases.

Section 16. undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied (a).

(a) For a case where a covenant to give a free supply to a farm house was held to be determined by its conversion into a mansion with a garage for motor cars, see *Hadham R. D. C. v. Crallan*, [1914] 2 Ch. 138; 78 J. P. 361; 43 Digest 1062, 37.

Penalty for waste, etc. of water by non-repair of pipes, etc.

17. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair (a), or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

(a) As to who is the "person supplied with water" in cases where the landlord pays the water rate, under s. 72 of the 1847 Act (see *Brock v. Harrison*, [1899] 1 Q. B. 958; 63 J. P. 455; 43 Digest 1096, 265), or voluntarily by agreement (see *Deeley v. Caine* (a case at quarter sessions) (1923), 87 J. P. N. 765). It has been held that where a stop-tap is affixed to a service pipe by the owner of the service pipe, he has committed an offence against the section, although the affixing could not lead to any waste or misuse of the water (*Williams v. Llandudno U. D. C.* (1897), 14 T. L. R. 18; 42 Sol. J. 34). See the judgments of *DARLING and PHILLMORE, JJ.*, in *Colne Valley Water Co. v. Hall* (1907), 71 J. P. 173; 96 L. T. 395, as to the liability to repair a communication pipe, not the property of the consumer, under a public highway. The Court of Appeal in affirming the decision refrained from giving their approval to the reasoning of the Divisional Court; see 72 J. P. 25; 98 L. T. 398; 43 Digest 1086, 193; and cf. *Parnell v. Portsmouth Waterworks Co.* (1910), 75 J. P. 99; 8 L. G. R. 1029; 43 Digest 1086, 194. See also *Batt v. M. W. B.*, [1911] 2 K. B. 965; 43 Digest 1099, 286.

Penalty for unauthorised application of water.

18. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes (a), uses, for other than domestic purposes (b), any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers,—

he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused (c).

(a) As to the meaning of this phrase, see *ante*, p. 4190.

(b) The use of water for washing a cart used in business is a use for "other than domestic purposes," and for washing a yard used for a trade and made dirty by such trade is a use for a trade purpose (*Cambridge University and Town Waterworks Co. v. Hancock* (1910), 74 J. P. 477; 103 L. T. 562; 43 Digest 1095, 259).

(c) Where a rural district council agreed with a water company for a supply of water for street watering, and other specified purposes, and one of the ratepayers in the district took water from the stand-pipe from which the council received such supply, and then used it for his own trade purposes, it was held that the ratepayer was liable to be convicted under this section (*Andrews v. Wits and Holly* (1901), 65 J. P. 281; 84 L. T. 124; 43 Digest 1095, 258). Where a railway company had obtained a supply of water by meter to a railway station, it was held that they were not authorised to use part of the supply to another railway station (*Great Northern Ry. Co. v. Bradford Corporation* (1918), 83 J. P. 33; 88 L. J. Ch. 101).

Penalty for unauthorised extension or alteration of pipes.

19. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe

or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alteration in any such communication or service pipe, or in any apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed (a). Section 19.

(a) The addition of a stop-tap on the service pipe requires the consent of the undertakers under this section (*Williams v. Llandudno U. D. C.* (1897), 14 T. L. R. 18; 42 Sol. J. 34). As to the affixing of a temporary hose-pipe to a communication pipe, see *Cambridge University and Town Waterworks Co. v. Hancock* (1910), 74 J. P. 477; 103 L. T. 562; 43 Digest 1095, 259. See also *Kyffin v. Metropolitan Water Board* (1908), 72 J. P. 517; 99 L. T. 809; 43 Digest 1104, 326.

20. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds (a). Penalty for wrongful taking of water.

(a) See also the Waterworks Clauses Act, 1847, s. 59, *ante*, p. 4193.

RECOVERY OF RATES.

And with respect to the recovery of water rates and other money, be it enacted as follows:

21. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof (a). Recovery of rates by action

(a) See the Waterworks Clauses Act, 1847, s. 74, *ante*, p. 4200, and *Metropolitan Water Board v. Bunn*, cited in the notes to that section.

SCHEDULE.

Section 6.

FORM OF ORDER OF JUSTICE (a).

To A. B., etc.

We the undersigned, two of her Majesty's justices of the peace acting for the [county] of , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein] forthwith to lower the water in the [here describe the reservoir and the extent to which the water is to be lowered], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the and for acting as you are hereby directed this shall be your sufficient warrant].

Given under our hands this day of one thousand eight hundred and

A. B.
C. D.

(a) See s. 6, *ante*, p. 4257.

Section 1.

THE AGRICULTURAL GANGS ACT, 1867.

(30 & 31 VICT. c. 130)(a).

An Act for the Regulation of Agricultural Gangs. [20th August, 1867.]

Short title.

1. This Act may be cited for all purposes as "The Agricultural Gangs Act, 1867."

(a) See the L. G. A., 1894, ss. 27 (1) (a), 32, *post*. The preamble, clause of enactment and second section of this Act are repealed by the S. L. R. A., 1893 (No. 1).

* * * * *

Interpretation.

3. The following words and expressions shall in this Act have the meanings hereby assigned to them unless there is something in the context inconsistent with such meanings; that is to say,

"Child" shall mean a child under the age of thirteen years:

"Young person" shall mean a person of the age of thirteen years and under the age of eighteen years:

"Woman" shall mean a female of the age of eighteen years or upwards:

"Gangmaster" shall mean any person, whether male or female, who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation; and, until the contrary is proved, any children, young persons, or women employed in agricultural labour on lands not in the occupation of the person who hired them shall be deemed to have been hired with the aforesaid view:

"Agricultural gang" shall mean a body of children, young persons, and women, or any of them, under the control of a gangmaster.

Regulations as to employment of children, young persons, and women by gangmasters.

4. The following regulations shall be observed by every gangmaster with respect to the employment of children, young persons, and women:

(1) . . . (a):

(2) No females shall be employed in the same agricultural gang with males:

(3) No female shall be employed in any gang under any male gangmaster unless a female licensed to act as a gangmaster is also present with that gang:

And any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding twenty shillings for each child, young person, or woman so employed.

(a) This sub-section, enacting that no child under the age of eight years should be employed in any agricultural gang, was repealed by s. 16 of the Agricultural Children Act, 1873, which substituted an enactment raising the age to ten. But that Act was itself repealed by the Education Act, 1921, which by s. 92 (1) prohibited the employment of children under the age of twelve and imposed restrictions on the employment of children between the ages of twelve and fourteen. Powers were also given to local education authorities by s. 90 of the same Act to regulate or prohibit by means of byelaws the employment of children under the age of fourteen. As to these matters, see now Children and Young Persons Act, 1933, ss. 18, 19, 21, Vol. V, *post*.

Gangmasters to be licensed.

5. No person shall act as a gangmaster unless he has obtained a licence to act as such under this Act.

Any person acting as a gangmaster without a licence under this Act shall incur a penalty not exceeding twenty shillings for every day during which he so acts.

6. No licence shall be granted to any person who is licensed to sell beer, spirits, or any other exciseable liquor. **Section 6.**

7. Licences to gangmasters shall be granted by two or more justices in divisional petty sessions (a), on due proof to the satisfaction of such justices that the applicant for a licence is of good character, and a fit person to be entrusted with the management of an agricultural gang.

Licences not to be granted to keepers of public-houses.
Licences to gangmasters to be granted by justices.

The justices (a) shall annex to their licence a condition limiting, in such manner as they think expedient, the distances within which the children employed by such gangmaster are to be allowed to travel on foot to their work; and any gangmaster violating the condition so annexed to his licence shall for each offence be liable to a penalty not exceeding ten shillings.

Any person aggrieved by the refusal of the justices (a) to grant him a licence to act as gangmaster may appeal to the next practicable court of general or quarter sessions; and it shall be lawful for such court, if they see cause, to grant a licence to the applicant, which shall be of the same validity as if it had been granted by the justices in petty sessions.

(a) Licences are now granted by district councils and not by the justices. See the L. G. A., 1894, s. 27, *post*.

8. Licences under this Act shall be in force for six months only, and may be renewed on similar proof to that on which an original licence is granted.

Duration and renewal of licences.

9. There shall be charged in respect of each grant or renewal of licence a fee of one shilling, and such fee shall be accounted for and applied in manner in which the fees ordinarily received by the authority granting the licence are applicable.

Fees in respect of licences and renewals.

10. On any conviction of a gangmaster of any offence against this Act the justices who convict him shall endorse on his licence the fact of such conviction; and on any conviction of such gangmaster of a second offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding three months; and on any conviction of any gangmaster of a third offence against this Act the justices may, in addition to any other penalty, withhold his licence for a period not exceeding two years.

Licence, how affected by first and other convictions of gangmaster.

And after a fourth conviction for an offence against this Act the gangmaster shall be disqualified from holding or receiving a licence under this Act.

11. All penalties under this Act may be recovered summarily before two or more justices in manner directed by the Summary Jurisdiction (England) Acts.

Recovery of penalties.
11 & 12 Vict. c. 43, etc.

12. This Act shall not apply to Scotland or Ireland.

Extent of Act.

THE REGULATION OF RAILWAYS ACT, 1868.

(31 & 32 VICT. c. 119)(a).

An Act to amend the Law relating to Railways.

[31st July, 1868.]

PRELIMINARY.

1. This Act may be cited as the Regulation of Railways Act, 1868.

Short title.

(a) The sections of this Act here set out are those which relate to arbitration, and are incorporated by s. 63 of the L. G. A., 1888, *post*. The preamble was repealed by the S. L. R. A., 1893 (No. 1).

* * * * *

Section 30.

Appointment
by Board of
Trade of arbi-
trator to act
for them.

30. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his award or decision shall be deemed to be the award or decision of the Board of Trade (b).

If the arbitrator dies, or in the judgment of the Board of Trade becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

(a) For the Board of Trade it is necessary to read the Minister of Transport or Health and for the company the county council, urban authority, or other party to the arbitration.

(b) Observe that the award is made by the arbitrator, and when made is to be deemed to have been made by the Minister. See *In re Kent C. C. and Sandgate L. B.*, [1895] 2 Q. B. 43; 59 J. P. 456; 2 Digest 457, 1045.

Remuneration
of arbitrators
or umpires
appointed by
Board of Trade.

31. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them; and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade.

Costs, etc. of
arbitrations
where one of the
parties is not
a railway
company.
22 & 23 Vict.
c. 59.

32. The provisions of section eighteen to twenty-nine, both inclusive, of the Railway Companies Arbitration Act, 1859 (a), shall so far as is consistent with the tenor thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this Act, the word "companies" shall be construed to mean the parties to the arbitration.

(a) Section 18 empowers the arbitrator to call for books and documents and administer oaths; s. 19 gives him discretion as to the manner of proceeding with the arbitration; s. 20 enables him to proceed in the absence of parties; s. 21 enables him to make several awards each on part of the matters referred; s. 22 makes the award conclusive; s. 23 gives the arbitrator power to extend the time for making an award; s. 24 prevents the setting aside of an award for irregularity; s. 25 provides that parties shall obey awards; s. 26, that all courts shall give effect to awards; s. 27, that costs shall be in the discretion of the arbitrator; s. 28, that in absence of order, costs are to be borne by parties equally; and s. 29, that submission may be made a rule of court.

For the text of these sections, see 14 Halsbury's Statutes 115 *et seq.*

* * * * *

THE GAS AND WATER WORKS FACILITIES ACT, 1870.

(33 & 34 VICT. c. 70)(a).

An Act to facilitate in certain cases the obtaining of Powers for the Construction of Gas and Water Works and for the Supply of Gas and Water.

[9th August, 1870.]

PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as the Gas and Water Works Facilities Act, 1870.

(a) Incorporated with the P. H. A., 1875, by s. 161, *post*, for the purpose of enabling a local authority to supply gas, and amended by the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, *post*, p. 4328. Preamble repealed by the S. L. R. A., 1893 (No. 2). The provisions of this Act are, however, modified or superseded, so far as it relates to gas undertakings by the Gas Regulation Act, 1920, Vol. V., *post*, and the Gas Undertakings Act, 1929, Vol. V., *post*. The provisions of the Act as regards water undertakings may now be considered to apply to companies only. Local authorities derive full

powers as to water supply from the Public Health Acts and incorporated enactments. The central department as regards *all* water undertakings is the Ministry of Health in pursuance of an Order in Council, dated November 9th, 1920, and as regards gas undertakings the Board of Trade in pursuance of another Order in Council of the same date. These Orders are set out in full at 3 Halsbury's Statutes 418. See also "combined purposes" rules, S. R. & O. 1926, No. 1188.

**Note to
Section 1.**

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereafter assigned to them; that is to say, Interpretation
of terms.

The term "local authority" shall mean the bodies of persons named in the table in Schedule (A.) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same:

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority:

The term "The Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England . . . the Lands Clauses Consolidation Act, 1845; . . . together with . . . the Lands Clauses Consolidation Acts Amendment Act, 1860 (a). 8 & 9 Vict. c. 18.
23 & 24 Vict.
c. 106.

(a) Words relating to Scotland and Ireland only are here omitted. See the statutes referred to, *ante*, pp. 4104, 4252.

DESCRIPTION OF CASES WITHIN THIS ACT.

3. This Act shall apply where powers are required for all or any of the purposes following: Act to apply to
certain cases.

(1) To construct or to maintain and continue gasworks and works connected therewith (a), or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or persons empowered by Act of Parliament (b) to construct such works or to manufacture and supply gas:

(2) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an existing company, corporation, body of commissioners, or persons empowered by Act of Parliament to construct such works and to supply water:

(3) To raise additional capital necessary for any of the purposes aforesaid:

(4) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings:

(5) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings:

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking" or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

(a) As to the right of a gas company to manufacture residuals, see *Deuchar v. Gas Light & Coke Co.*, [1925] A. C. 691; 89 J. P. 177; 25 Digest 471, 10, and as to the purchase of residuals, see the Gas Undertakings Act, 1929, s. 4, Vol. V., *post*.

(b) This expression is construed as meaning special Act of Parliament.

Section 4.

PROVISIONAL ORDERS AUTHORISING GAS AND WATER UNDERTAKINGS (a).

By whom
Provisional
Orders
authorising
undertakings
may be
obtained.

4. Provisional Orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the terms "the undertakers" (b) shall be deemed to include any such company, companies, or person.

Where the undertakers require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority (c) of such district shall be necessary before any Provisional Order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any Provisional Order can be obtained, unless the Board of Trade (d) in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry (e), that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

(a) The Gas Regulation Act, 1920, s. 10, Vol. V., *post*, provides that anything which under the Gas and Waterworks Facilities Act, 1870, or any Act amending the same may be effected by a provisional order confirmed by Parliament, may, so far as these enactments relate to gas, be effected by a special order made on the application of any local authority, company or person by the Board of Trade, under and in accordance with that section and for the purposes of the powers conferred by that section, the Act of 1870 shall have effect as if s. 15 thereof (*post*) were omitted therefrom. The Act of 1920 further provides for the inclusion in a special order of many matters, for which reference should be made to the Act itself, which is set out *in extenso*, Vol. V., *post*.

(b) See also note (a) to s. 1, *ante*, p. 4264. This word applies to a district council and in relation to gas only. See the P. H. A., 1875, ss. 161, 316, *post*, and notes thereto, from which it will be seen that as regards gas undertakings special orders under the Act of 1920 have now superseded provisional orders under the Act of 1870. As to revocation, extension, or amendment of the Order, see the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, s. 12, *post*, p. 4328, and the Act of 1920.

(c) See Sched. A, *post*, p. 4270. It will be observed that the local authority in a rural parish is the successor of the vestry, *viz.* the Parish Council. Consequently the county council, who have now under the Local Government Act, 1929, become the highway authority in rural districts, will be "the road authority" distinct from the local authority. The county council will also occupy the same position as regards "unclaimed" county roads in urban districts.

(d) The L. G. B. were substituted for the Board of Trade in respect of any gasworks established by an urban authority. See the P. H. A., 1875, s. 161, *post*. Power to transfer the powers of the L. G. B. under this Act to county councils exists under s. 10 of the L. G. A. 1888, and the Local Government (Transfer of Powers) Act, 1903, but has never been exercised. The powers and duties of the L. G. B. were transferred to the Minister of Health by the Ministry of Health Act, 1919, s. 3, *post*, p. 5191, but by Order in Council of November 9th, 1920, the powers and duties of the Minister of Health as regards gas were transferred to the Board of Trade. Powers as to finance, however, vest in the Minister of Health.

(e) See the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, s. 13, *post*, p. 4328.

5. The undertakers intending to make an application for a Provisional Order in pursuance of this Act shall proceed as follows:

- (1) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:
- (2) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention

Notices and
deposit of
documents by
promoters as
in schedule.

Section 5.

to make such application by advertisement, according to the regulations contained in Part One of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any water-work, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees, or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such stream, unless such waters shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:

- (3) On or before the thirteenth day of the same month of November they shall deposit the documents described in Part Two of the same Schedule, according to the regulations therein contained:
- (4) On or before the twenty-third day of December in the same year they shall deposit the documents prescribed in Part Three of the same Schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Parliamentary Documents Deposit Act, 1837; and all the provisions of that Act shall apply accordingly.

7 WILL. 4 & 1
Vict. c. 83.

As to deposit of documents, cf. notes, *ante*, p. 1159.

6. The Board of Trade shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application (a).

Board of Trade
to consider
application and
objection.

(a) See s. 14 of the Amending Act of 1873, and notes thereto, *post*, p. 4329, as to the rules which must now be observed. The current rules are set out *ante*, p. 4069.

7. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade may settle and make a Provisional Order (a) accordingly.

Board of Trade
to make
Provisional
Order.

Every such Provisional Order (a) if it relates to gasworks shall expressly restrict the undertakers from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the Order; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the Order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Every such Provisional Order (a) shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by this Act (b); but so that any such Pro-

Form and
contents of
Provisional
Order.

Section 7. Provisional Order shall not contain any provision for empowering the undertakers or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited.

Costs of Order. The costs of and connected with the preparation and making of each Provisional Order shall be paid by the undertakers, and the Board of Trade may require the undertakers to give security for such costs before they proceed with the Provisional Order.

(a) See note (a) to s. 4, *ante*, p. 4266.

(b) See s. 9, *infra*.

Publication of Provisional Order.

8. When a Provisional Order (a) has been made as aforesaid and delivered to the undertakers, the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part Four of the Schedule (B.) to this Act.

(a) See note (a) to s. 4, *ante*, p. 4266.

Confirmation of Provisional Order by Act of Parliament.

9. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any Provisional Order (a) which shall have been published as aforesaid, not later than the twenty-fifth of April (b) in any year procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the Schedule to the Bill: but until confirmation by Act of Parliament a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order (a) comprised therein, the Bill, so far as it relates to the Order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming any Provisional Order under this Act shall be deemed a public general Act.

(a) See note (a) to s. 4, *ante*, p. 4266.

(b) It was formerly considered that this date applied to the publication of the Order, and not to the introduction of a Bill into Parliament. See, however, note (a) to s. 4, *ante*, p. 4266.

Incorporation of general Acts in Provisional Order.

10. The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order (a) under this Act, save where the same are expressly varied or excepted by any such Provisional Order (a), and except as to the following provisions, namely,—

- (1) With respect to the purchase and taking of lands otherwise than by agreement:
- (2) With respect to the entry upon lands by the promoters of the undertaking.

10 & 11 Vict.
c. 15.

Where a Provisional Order (a) authorises a gas undertaking the provisions of the Gasworks Clauses Act, 1847 (b), shall be incorporated with such Provisional Order (a), save where the same are thereby expressly varied or excepted.

10 & 11 Vict.
c. 17.
26 & 27 Vict.
c. 93.

Where a Provisional Order authorises a water undertaking the provisions of the Waterworks Clauses Act, 1847, and of the Waterworks Clauses Act, 1863 (c), shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a Provisional Order under this Act **Section 10.** shall be deemed the special Act (d).

(a) See note (a) to s. 4, *ante*, p. 4266.

(b) *Ante*, p. 4163. And see the Gas Regulation Act, 1920, Vol. V., *post*, referred to in note (a) to s. 4, *ante*, p. 4266.

(c) *Ante*, pp. 4176, 4256.

(d) See also the P. H. A., 1875, s. 316, *post*, p. 4517.

11. If any undertakers empowered by any Provisional Order under this Act to make works do not, within three years from the date of such Provisional Order, or within any shorter period prescribed therein, complete the works; or,

Cesser of powers at expiration of prescribed time.

If within one year of the date of the Provisional Order, or within such shorter time as is prescribed in the Provisional Order, the works are not substantially commenced; or,

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the Provisional Order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade.

A statement in writing by the Board of Trade to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

12. The undertakers empowered by any Provisional Order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such Provisional Order, rents and rates respectively not exceeding the sums specified in such Provisional Order, subject and according to the regulations therein specified.

Gas rents and water rates.

13. Nothing in any Provisional Order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks, passed after the passing of this Act (a), or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the Provisional Order.

Company not exempt from provisions of general Act.

(a) See the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, *post*, p. 4328.

14. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connection with the Board of Trade shall be done by or in connection with such substituted department.

Queen in Council may substitute any department for Board of Trade for the purposes of this Act.

15. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855 (a).

Act not to apply to metropolis. 18 & 19 Vict. c. 120.

(a) See, however, the Gas Regulation Act, 1920, s. 10, Vol. V., *post*, which is referred to in note (a) to s. 4, *ante*, p. 4266.

Schedules.

SCHEDULE A (a).

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
<p><i>England and Wales.</i></p> <p>Boroughs (1)</p> <p>Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.</p> <p>Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (b).</p> <p>Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.</p> <p>.</p>	<p>The mayor, aldermen, and burgesses acting by the council.</p> <p>The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.</p> <p>The local board.</p> <p>The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.</p> <p>.</p>

(1) "Borough" shall mean any place for the time being subject to the Municipal Corporations Act, 1835 (c).

(a) Parts of this Schedule relating only to Scotland or Ireland are here omitted.

(b) See the L. G. A., 1933, s. 1 (2), *ante*, p. 738.

(c) Now the L. G. A., 1933, s. 1 (2) (b) and (c), and Sched. I., Pts. II., III, *ante*, pp. 738, 1197, 1198.

SCHEDULE B.

PROVISIONAL ORDERS (a).

PART I.

[S. 5 (2), *ante*.]

Advertisement in October or November of intended Application.

(1) Every advertisement is to contain the following particulars :

1. The objects of the intended application.

2. A general description of the nature of the proposed new works, if any.

3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.

4. The times and places at which the deposit under Part II. of this Schedule will be made.

5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

(2) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district is situate in England . . .

(a) See now Gas Regulation Act, 1920, s. 10, Vol. V., *post*, as regards gas, and note (b) to s. 14 of the Act of 1873, *post*, p. 4329.

Schedule.

PART II.

Deposit on or before 30th November.

[S. 5 (3), *ante*.]

- (1) The undertakers are to deposit—
 1. A copy of the advertisement published by them.
 2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
 3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf (a).
- (2) The documents aforesaid are to be deposited for public inspection—
In England . . . in the office of the clerk of the peace for every county, riding, or division . . . which will be affected by the proposed undertaking, or in which any proposed new work will be made.
- (3) The documents aforesaid are also to be deposited at the office of the Board of Trade.

(a) See note (a) to s. 6, *ante*, p. 4267.

PART III.

Deposit on or before 23rd December.

[S. 5 (4), *ante*.]

- (1) The undertakers are to deposit at the office of the Board of Trade—
 1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
 2. A printed draft of the Provisional Order as proposed by the undertakers, with any schedule referred to therein.
 3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.
- (2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.
- (3) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require :

[Short Title of Undertaking.]

To the Board of Trade.

The memorial of the undertakers of *[short title of undertaking]* :
Sheweth as follows :

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement :

[Here advertisement to be set out verbatim.]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and *[here state deposit of the several matters required by Act]*.

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Undertakers.

PART IV.

Deposit and Advertisement of Provisional Order when made.

[S. 8, *ante*.]

(1) The undertakers are to deposit printed copies of the Provisional Order when settled and made, for public inspection in the offices of clerks of the peace . . . where the documents required to be deposited by them under Part II. of this Schedule were deposited.

Schedule.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of _____ each.

(3) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

THE TRAMWAYS ACT, 1870.

(33 & 34 VICT. c. 78)(a).

An Act to facilitate the Construction and to Regulate the Working of Tramways.
[9th August, 1870.]

PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as "The Tramways Act, 1870."

(a) This Act gives to local authorities important powers with regard to tramways and tramway companies, and is, therefore, included in this Appendix. The preamble was repealed by the S. L. R. A., 1893 (No. 2). The subject belongs rather to the law of highways than to that of public health, and the notes are, therefore, chiefly confined to references to decided cases. It may be convenient to mention here that by the Ministry of Transport Act, 1919, s. 2, *post*, p. 5197, there were transferred to the Ministry of Transport all the powers and duties of any Government department in relation to tramways as from a date or dates to be fixed by His Majesty in Council. By an Order in Council dated the 22nd Sept., 1919 (S. R. & O., 1919, No. 1440), the powers and duties of the Board of Trade in relation to tramways were transferred to the Minister of Transport as from the 23rd Sept., 1919. It is necessary, therefore, to read references in this Act to the Board of Trade as references to the Minister of Transport. Under s. 5 of that Act, *post*, p. 5201, the Minister was given power to require through runnings on adjoining tramways. As to the power of local authorities with tramway powers to run public service vehicles, see Road Traffic Act, 1930, Pt. V.

Limitation of
Act.
Interpretation
of terms.

2. This Act shall not extend to Ireland.

3. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say,

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part I. of the Schedule A. to this Act annexed :

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same :

The term "road authority" shall mean, in the districts specified in the table in Part II. of the Schedule A. to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road (a) :

The term "district" in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority :

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act :

The term "the Land Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England, the Lands Clauses Consolidation Act, 1845 ; . . . together with . . . the Lands Clauses Consolidation Acts Amendment Act, 1860 (b) :

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

(a) See *Wolverhampton Tramways Co., Ltd. v. G. W. Rail. Co.*, cited in the note to s. 32, *post*, p. 4286.

An agreement between a county council and a district council, whereby the latter agreed to maintain a main road under s. 11 of the L. G. A., 1888, was held not to affect the rights of the former as the road authority within the above definition (*Stockport and Hyde Highway Board v. Cheshire C. C.* (1891), 55 J. P. 808; 61 L. J. Q. B. 22; 26 Digest 280, 169). A delegation under s. 35 of the L. G. A., 1929, will not, therefore, affect the position of a county council as the road authority in respect of all county roads (except those claimed under s. 32, *ibid.*) in urban districts and in respect of all roads in rural districts (s. 30, *ibid.*).

(b) Words in this clause relating to Scotland only are here omitted. See the statutes referred to, *ante*, pp. 4104, 4252.

PART I.

PROVISIONAL ORDERS AUTHORISING THE CONSTRUCTION OF TRAMWAYS.

4. Provisional Orders (a) authorising the construction of tramways (b) in any district may be obtained by—

By whom
Provisional
Orders
authorising the
construction of
tramways may
be obtained.

(1) The local authority of such district; or by—

(2) Any person, persons, corporation, or company, with the consent of the local authority of such district; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of the Highway Acts (c):

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as the "promoters."

Application for a Provisional Order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the Schedule A. to this Act annexed.

Where in any district there is a road authority distinct from the local authority (d), the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any Provisional Order can be obtained.

(a) See the rules issued by the Board of Trade with respect to Provisional Orders under this Act. See s. 64, *post*, p. 4302, and notes thereto. The construction of a tramway without statutory authority may amount to a nuisance at common law (*R. v. Train* (1862), 2 B. & S. 640; 26 J. P. 469; 26 Digest 419, 1387). The local authority may lawfully agree with a tramway company not to apply for powers to construct nor to give their consent to the construction by others of tramways on roads within their district without first calling on the particular tramway company with which the agreement is made to apply for powers themselves (*Att.-Gen. v. Hastings Corporation* (1902), 67 J. P. 165; 19 T. L. R. 9; 13 Digest 366, 992).

(b) As to income tax on tramways, see *London C. C. v. Edwards* (1909), 73 J. P. 213; 100 L. T. 444; 28 Digest 54, 276; *Poole Corporation v. Bournemouth Corporation* (1910), 75 J. P. 13; 103 L. T. 828; 28 Digest 72, 380.

(c) *I.e.*, the Highway Acts, 1835, 1862, and 1864 (9 Halsbury's Statutes 50, 122, 142). See s. 1 of the last-mentioned Act.

(d) *E.g.*, a county council, in rural districts or in relation to unclaimed county roads in urban districts.

5. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade (a) may, nevertheless, make a Provisional Order authorising the construction of such tramway if they are satisfied, after inquiry (b), that two-thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

The Board of
Trade may in
certain cases
dispense with
the consent of
local or road
authority.

(a) Now the Ministry of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) As to local inquiries, see s. 63, *post*, p. 4302. But the non-consenting local authority may be heard against the Bill for confirming the Provisional Order (*Glasgow Corporation Tramways Bill* (1878), 2 Cl. & R. 95).

Section 6.

Notices and deposit of documents by promoters as in schedule.

6. The promoters intending to make an application for a Provisional Order shall proceed as follows :

- (1) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement (a) ; and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the Standing Orders (if any) of both Houses of Parliament for the time being in force with respect to Bills for the construction of tramways :
- (2) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same Schedule, according to the regulations therein contained :
- (3) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same Schedule, according to the regulations therein contained :

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Parliamentary Documents Deposit Act, 1837 ; and all the provisions of that Act shall apply accordingly.

(a) See the form prescribed in Part I. of Schedule B., *post*, p. 4304, a reference to which is obviously omitted here by an oversight.

Consideration of application and objections.

7. The Board of Trade (a) shall consider the application, and may, if they think fit, direct an inquiry (b) in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint (c), and shall determine whether or not the promoters may proceed with the application.

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) As to local inquiries, see s. 63, *post*, p. 4302.

(c) See the regulations made under s. 64, *post*, p. 4302.

Power for Board of Trade to make Provisional Order.

8. Where it appears to the Board of Trade (a) expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade (a) may settle and make a Provisional Order accordingly.

Form and contents of Provisional Order.

Every such Provisional Order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade (a) according to the nature of the application and the facts and circumstances of each case, think fit to submit to Parliament for confirmation in manner provided by this Act ; but so that any such Provisional Order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road (b), or upon land taken by agreement (c).

(a) See note (a) to s. 7, *supra*.

(b) Defined by s. 3, *ante*, p. 4272.

(c) If compulsory powers of taking land are required, they must be obtained by private Bill. See also s. 15, *post*, p. 4276. A company had statutory power to lay a second line of tramway on obtaining certain consents, but without obtaining such consents they laid the rails :—*Held*, that they were liable for a trespass, and that as damages they were liable in any event for the cost of restoring the road (*Bideford U. D. C. v. Bideford, etc., Rail. Co.* (1903), 68 J. P. 123 ; 43 Digest 341, 15).

Regulations as to construction

9. Every tramway in a town (a) which is hereafter authorised by Provisional Order shall be constructed and maintained as nearly as may be in

the middle of the road; and no tramway shall be authorised by any Provisional Order to be so laid that for any distance of thirty feet or upwards a less space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one-third of the owners or one-third of the occupiers of the houses, shops, or warehouses abutting upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from the tramway being so laid (b).

Section 9.

of tramways
in towns.

(a) See note (a) to s. 93 of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4140.
(b) The Order will be good if it dispenses with the 9 ft. 6 in. limit in the absence of express dissent of the occupiers (*Edinburgh Street Tramways v. Black* (1873), L. R. 2 Sc. & Div. 336; 37 J. P. 692; 43 Digest 340, 6). See also *Wilkinson and Marshall v. Newcastle-upon-Tyne Corporation* (1902), 18 T. L. R. 332; 28 Digest 471, 795.

10. Every such Provisional Order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade (a) shall deem necessary and proper (b).

Nature of
traffic on
tramways
and tolls to be
specified in
Provisional
Order.

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.
(b) The working of omnibuses in connection with the tramways must be specially provided for if the local authority contemplate such an addition to the tramways (*London C. C. v. Att.-Gen.*, [1902] A. C. 165; 66 J. P. 340; 13 Digest 366, 994). As to the construction of a statute empowering a local authority to run omnibuses in connection with their tramway undertaking, see *Att.-Gen. v. Leeds Corporation*, [1929] 2 Ch. 291; 93 J. P. 153; Digest Supp. The question is not whether a business can be conveniently or advantageously conducted with the tramway business, but whether it is by necessary implication incidental or necessary to it, see *per FARWELL, J.*, in *Att.-Gen. v. Manchester Corporation*, [1906] 1 Ch. 643, 656; 70 J. P. 201; 13 Digest 362, 972, where the corporation were restrained from carrying on a parcels delivery service in connection with their tramway undertaking. As to the conveyance of mails by tramways, see the Conveyance of Mails Act, 1893 (13 Halsbury's Statutes 36). In *Clogher Valley Tramway Co., Ltd. v. R.* (1892), 30 L. R. Ir. 316, it was held that a steam tramway constructed by a company authorised thereto by Provisional Order, under the Tramways (Ireland) Act, 1860, confirmed by special Act, was not a railway within the meaning of the Post Office (Parcels) Act, 1882, and that the rights and liabilities of the company and the Postmaster-General respectively as regarded the conveyance of parcels thereon, were regulated solely by the special Act confirming the Provisional Order.

11. The costs of and connected with the preparation and making of each Provisional Order shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the Provisional Order (a).

Costs of
Order.

(a) These costs are to be taxed on the Chancery, and not on the parliamentary scale (*In re Morley* (1875), L. R. 20 Eq. 17; 43 Digest 340, 7). And see *In re Peterson*, [1909] 2 Ch. 398; 73 J. P. 461; Digest, Practice 863, 4071, and *Re Cannings, Ltd. and Middlesex C. C.*, [1907] 1 K. B. 51; Digest, Practice 947, 4871.

As to the costs of a parliamentary agent employed by a promoter who is not mentioned in the Act and does not become a member of the company, see *Re Skegness and St. Leonard's Tramways Co.* (1888), 41 Ch. D. 215; 10 Digest 1113, 7330.

12. After a Provisional Order is ready, and before the same is delivered by the Board of Trade (a), the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit, in such bank any security of the prescribed nature the then value of which is not less than such sum of money (b).

Promoters to
deposit £4 per
cent. on
estimate in
prescribed
bank.

(a) See note (a) to s. 10, *supra*.
(b) This section has no application to a local authority. See the Parliamentary Deposits and Bonds Act, 1892; *Re Bradford Tramways Co.* (1876), 4 Ch. D. 18; 36 Digest 280, 278; *Re Lowestoft, Yarmouth and Southwold Tramways Co.* (1877), 6 Ch. D. 484; 36 Digest 283,

**Note to
Section 12.**

307; *Re Tynemouth Borough Tramways Co., Ltd.* (1875), 33 L. T. 8; 43 Digest 358, 131; *Ex parte Chambers*, [1893] 1 Ch. 47; 38 Digest 391, 864; *Re Colchester Tramways Co.*, [1893] 1 Ch. 309; 36 Digest 280, 277; *Re Dudley and Kingswinford Tramways Co.* (1893), 63 L. J. Ch. 108; 43 Digest 341, 10; *Ex parte Bradford and District Tramways Co.*, [1893] 3 Ch. 463; 36 Digest 283, 308; *Turpin v. Somerton Tramway Co.*, [1900] W. N. 94; Digest, Practice 725, 3125; *Att.-Gen. v. Bournemouth Corporation*, [1902] 2 Ch. 714; 43 Digest 340, 9. As to the claim of solicitors and parliamentary agents for their costs, see *In re Manchester, etc., Tramways Co.*, [1893] 2 Ch. 638; 36 Digest 278, 263.

**Publication of
Provisional
Order as in
Schedule.**

13. When a Provisional Order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part IV. of the Schedule B. to this Act.

**Confirmation
of Provisional
Order by Act of
Parliament.**

14. On proof to the satisfaction of the Board of Trade (a) of the completion of such publication as aforesaid, the Board of Trade (a) shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a Bill to be introduced into either House of Parliament in relation to any Provisional Order which shall have been published as aforesaid not later than the twenty-fifth of April (b) in any year, for an Act to confirm the Provisional Order, which shall be set out at length in the Schedule to the Bill; and until confirmation, with or without amendment, by Act of Parliament, a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the Order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming a Provisional Order under this Act shall be deemed a public general Act.

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) See note (b) to s. 9 of the Gas and Water Works Facilities Act, 1870, *ante*, p. 4268.

**Incorporation
of general
Acts in
Provisional
Order.**

15. The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

- (1) With respect to the purchase and taking (a) of lands otherwise than by agreement;
- (2) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

(a) If compulsory powers are required they must be obtained by private Bill.

The erection, by a tramway company which was empowered by their special Act to erect on in over or under any street or road poles and posts, of a pillar on land belonging to the plaintiff forming part of the highway subject to being used by him for exposure of furniture for sale was held not to be a taking of land within the meaning of the Lands Clauses Acts, but only an exercise of their special statutory powers (*Escott v. Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135; 26 Digest 327, 597). As to whether a local authority is entitled to use land vested in them as a public park for the purpose of road-widening to facilitate the construction of a tramway under a Provisional Order, see *Att.-Gen. v. Folkestone Corporation*, Times, April 29th, 1903.

**Power of
Board of
Trade to
revoke, amend,
extend, or vary
Provisional
Order.**

16. The Board of Trade (a) on the application of any promoters empowered by a Provisional Order may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order, and until such confirmation such further Provisional Order shall not have any operation. Section 16. —

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

17. Subject and according to the provisions of this Act, the Board of Trade (a) may, on a joint application, or on two or more separate applications, settle and make a Provisional Order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and separate parts of such tramway as last aforesaid; and the form of the Provisional Order may be adapted to the circumstances of the case. Power to authorise joint work.

(a) See note (a) to s. 16, *supra*.

18. If the promoters empowered by any Provisional Order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or, Cesser of powers at expiration of prescribed time.

If within one year from the date of the Provisional Order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade (a) to warrant such suspension;

the powers given by the Provisional Order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade (a); and as to so much of the same as is then completed the Board of Trade (a) may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade (a) in the London or Edinburgh Gazette, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and open for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purpose of this section of such non-completion, non-commencement, or suspension (b).

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) See note (b) to s. 12, *ante*, p. 4275. The notice referred to in this section is not the exclusive or only evidence of the non-commencement of the works that the court can receive. The works mean the physical works, and therefore where nothing has been done but the entering into contracts for the supply of dynamos, plant, and cars, the works have not been substantially commenced within the meaning of this section (*Att.-Gen. v. Bournemouth Corporation*, [1902] 2 Ch. 714; 43 Digest 340, 9). The only remedy of a private person for compelling the carrying out of the statutory powers is by complaint to the Board of Trade. The giving of the powers is no longer regarded as a bargain between the promoters and the public (*York and North Midland Rail. Co. v. R.* (1853), 1 El. & Bl. 858; 22 L. J. Q. B. 225; 38 Digest 257, 32; *R. v. G. W. Rail. Co.* (1893), 58 J. P. 74; 62 L. J. Q. B. 572; 38 Digest 258, 34). But there may be special provision in the Act, see *Devonport Corporation v. Plymouth, Devonport and District Tramways Co.* (1884), 49 J. P. 405; 52 L. T. 161; 42 Digest 759, 1857.

Section 19. 19. When a tramway has been completed under the authority of a Provisional Order by any local authority, or where any local authority has under the provisions of this Act (a) acquired possession of any tramway, such authority may, with the consent of the Board of Trade (b), and subject to the provisions of this Act, by lease, to be approved of by the Board of Trade (b), demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised (c); or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorised; but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages (d).

Local authority
may lease or
take tolls.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the Schedule C. to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade (b).

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade (b), by lease, demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees" (e).

(a) See s. 43, *post*, p. 4291.

(b) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(c) See note (b) to s. 4 on p. 4273, *ante*. See also *Salford Corporation v. Eccles Corporation*, [1912] A. C. 465; 76 J. P. 249; 43 Digest 356, 122, where a licence granted without the consent of the Board of Trade was held to be *ultra vires*.

(d) This last restriction is frequently removed in Provisional Orders.

(e) Apart from the express provisions of this section undertakers cannot grant a lease of their statutory powers (see *per* Lord BLACKBURN, in *Att.-Gen. v. G. E. Rail. Co.* (1880), 5 App. Cas. 473, at p. 484; 44 J. P. 648; 13 Digest 356, 932; *Winch v. Birkenhead, etc. Rail. Co.* (1852), 5 De G. & Sm. 562; 38 Digest 326, 418). As to the stamp on the lease, see *British Electric Traction Co. v. Commissioners of Inland Revenue*, [1902] 1 K. B. 441; 66 J. P. 83; 43 Digest 357, 126. For forms of leases, see the *Encyclopædia of Forms and Precedents*, Vol. XVII., title TRAMWAYS. See also as to construction of clause in a lease for relieving the lessors from owners' assessments, *Glasgow Corporation v. Glasgow Tramway and Omnibus Co.*, [1898] A. C. 631; 43 Digest 356, 124. Lessees cannot sub-assign (*Omnibus Conveyance Co. v. Liverpool United Tramways and Omnibus Co.* (1882), 26 Sol. J. 580; 42 Digest 724, 1426). See also *Re Bradford Tramways, etc. Co., Ltd., Courtenay's Case* (1904), 68 J. P. 362, and *Greenock and Port-Glasgow Tramway Co. v. Greenock Corp.* (1920), 57 Sc. L. R. 481.

How expenses
to be
defrayed.

20. (a) Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a Provisional Order, and carrying into effect the purposes of such Provisional Order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount and is by reason of such limitation insufficient for the payment of such expenses, the

Board of Trade (b) may, by the Provisional Order, extend the limit of such local rate to such amount as they shall think fit, and prescribe for the payment of such expenses. Section 20.

Such local authority may, for the purposes of such Provisional Order, borrow . . . any sums of money necessary for defraying any such expenses.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such Provisional Order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorised thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such Provisional Order, there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramways authorised by such Provisional Order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied.

Certain words in this section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1281. Borrowing is now regulated by ss. 196, 198 and Sched. VIII. of that Act, *ante*, pp. 1031, 1033, 1265.

(a) Reference may be made to the Public Utility Companies (Capital Issues) Act, 1920 (now expired), which provided for the variation of the provisions regulating the raising of capital by companies carrying on certain statutory undertakings such as tramways.

(b) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

21. [*Metropolitan Board of Works (a) may, for carrying Provisional Order into effect, create stock under the Metropolitan Board of Works (Loans) Act, 1869.*]

(a) Now the London C. C. (Local Government Act, 1888, s. 40 (8)).

PART II.

CONSTRUCTION OF TRAMWAYS (a).

22. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorised by any Provisional Order or Act of Parliament, and shall be incorporated with such Provisional Order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such Provisional Order or Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said Provisional Order or Act, and be construed therewith as forming one Provisional Order or Act, as the case may be.

As to incorporation of Parts II. and III. of this Act with Provisional Order and special Acts.

(a) A tramway company authorised to construct and maintain tramways with all proper rails, plates, works, and conveniences connected therewith were, notwithstanding the powers contained in this Act, held liable for a nuisance created by smells arising from their stables (*Rapier v. London Tramways Co.*, [1893] 2 Ch. 588; 36 Digest 175, 206). And where a tramway company after a heavy fall of snow cleared their track by means of a snow plough, and heaped up the snow on the sides of the streets, and then scattered salt upon the track, it was held that although they had obtained the consent of the local authority, and that authority took no steps to clear away the briny slush which was thereby caused, and rendered the street dangerous to other traffic, the tramway company were liable for the nuisance so created (*Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 61 J. P. 436; 26 Digest 439, 1562). But where a corporation purporting to act in the exercise of their powers under their special Tramways Act, which incorporated this Act, and authorised the construction of an electric tramway, erected a pole and a fuse-box on the footpath close to the entrance of the plaintiffs' premises, it was held that their statutory powers authorised them to use the pavement for the purpose of doing that which was necessary for making their tramway an electrical tramway, and that the nuisance which they were authorised to commit could not be interfered with unless the plaintiffs could prove that the powers conferred on the corporation had been abused (*Goldberg & Son, Ltd. v. Liverpool Corporation* (1900), 82 L. T. 362; 16 T. L. R. 320; 43 Digest 342, 24). And see *Wandsworth Corporation v. London United Tramways* (1901), *Ltd.* (1905), 69 J. P. 340;

**Note to
Section 22.**

21 T. L. R. 529; 43 Digest 342, 20, as to breaking up streets for the purpose of connecting the tramway with the power station by means of an underground electric cable.

By an agreement between the corporation and a tramway company in the city, it was agreed that the company should, under instructions from the city, keep their track free from ice and snow:—*Held*, that the company were not bound to remove from the streets altogether the snow and ice cleared off the tramway track, and that the words “under instructions from the city,” only applied to the extent of the work to be done, not to the particular method to be adopted for doing it. The city also granted to the company all licences, rights, and privileges necessary for the proper and efficient use by electric power to operate cars in the manner successfully in use elsewhere:—*Held*, that the city was not at liberty to prohibit the company from using electric sweepers which had been found successful in other cities (*Montreal City v. Montreal Street Rail. Co.*, [1903] A. C. 482; 26 Digest 439, 1562 *ii*).

“Special Act.” **23.** In Part II. and Part III. of this Act, the term “special Act” shall be construed to mean any Act of Parliament which shall be hereafter passed or any Provisional Order authorising the construction of a tramway, and with which the said Parts of this Act shall be incorporated as aforesaid.

“Promoter.” **24.** The term “the promoters” shall mean any person, persons, corporation, company, or local authority authorised by special Act to construct a tramway.

**Mode of
formation of
tramways.**

25. Every tramway which is hereafter authorised by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch; and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road; and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner (a).

(a) If the tramway is opened without the required certificate, the Attorney-General may obtain an injunction against its working (*Att.-Gen. v. Southall, Baking, and Shepherds Bush Tramways Co.*, Times, July 10th, 1874). When the special Act directs compliance with deposited plans and sections, they are regarded as embodied in the statute (*Edinburgh Street Tramways Co. v. Black* (1873), L. R. 2 Sc. & Div. 336; 37 J. P. 692; 43 Digest 340, 6). Necessary consents required by statute must also be obtained (*Devonport Corporation v. Plymouth, Devonport, and District Tramway Co.* (1884), 49 J. P. 405; 52 L. T. 161; 28 Digest 498, 999).

**Power to break
up streets,
etc.**

26. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised, or any part or parts thereof respectively, may open and break up any road (a), subject to the following regulations:

1. They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work:
2. They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority (b), unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work:
3. They shall pay all reasonable expenses to which the road authority is put on account of such superintendence (b):
4. They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the

promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards. Section 26.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

(a) Defined by s. 3, *ante*, p. 4272. As to whether this includes footways, see *Hyde Corporation v. Oldham, etc. Tramway, Ltd.* (1900), 64 J. P. 596; 16 T. L. R. 492.

(b) See the notes to s. 28, *post*, p. 4282.

27. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations, namely, Completion of works and reinstatement of road.

1. They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby:
2. They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night:
3. They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

28. The promoters shall, at their own expense, at all times maintain (a) and keep in good condition and repair (b), with such materials and in such manner as the road authority shall direct, and to their satisfaction (c), so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so Repair of part of road where tramway is laid.

Section 28. much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway (d). If the promoters abandon their undertaking, or any part of the same (e), and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night: Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days' notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters (f).

(a) The removal of snow from the portion of a road lying between the rails of a tramway is not "maintenance" within the meaning of the section unless the fall of snow is of such a depth as to render the road impassable (*Acton District Council v. London United Tramways*, [1909] 1 K. B. 68; 73 J. P. 6; 26 Digest 439, 1563). See also note (a) to s. 22, ante, p. 4279.

(b) For a case where a nuisance was caused by the use of creosoted wood blocks, see *West v. Bristol Tramways Co.*, [1908] 2 K. B. 14; 72 J. P. 243; 38 Digest 27, 147.

(c) I.e., their reasonable satisfaction. The question as to whether the authority ought reasonably to be satisfied must go to arbitration under s. 33, post, p. 4286 (*R. v. Garrett and Hammersmith Borough Council, Ex parte London United Tramways, Ltd.* (1909), 73 J. P. 188; 100 L. T. 533; 43 Digest 344, 38). See also the cases cited in note (b) to s. 32, p. 4286, post.

(d) By the Norwich Electric Tramways Act, 1897, the defendant company were to maintain and keep in good condition "the junction of the paving laid and maintained by the company with the surface laid and maintained by the corporation":—*Held*, that the word "junction" could not only mean the mere point or place where the two surfaces met, but that the defendant company had to maintain an even contour of the road at the junction of the two surfaces (*Norwich Corporation v. Norwich Electric Tramways Co.* (1904), 91 L. T. 558). By the same Act the corporation were empowered to do the work necessary for the repair and maintenance of the road, and the company were required in such a case to repay to the corporation the expense reasonably incurred with the addition of 5 per cent. on such expense. The surface laid and maintained by the corporation became worn down below the level of the paving laid and maintained by the company, and the corporation executed certain work to obviate inconvenience to the public owing to the state of the road. It was held that such expenses were incurred in maintaining and keeping in good condition the junction of the pavement laid and maintained by the company with the surface laid and maintained by the corporation and therefore recoverable by the corporation (*In re Norwich Corporation and Norwich Electric Tramways Co., Ltd.* (1908) 72 J. P. 178; 99 L. T. 133; 43 Digest 345, 41). As to the meaning of the word "junctions" in relation to the construction of the tramway itself, see *Wilkinson and Marshall v. Newcastle-on-Tyne Corporation* (1902), 18 T. L. R. 332; 28 Digest 471, 795. As to the liability of a tramway company in respect of the repair of a bridge widened by them, see *Teddington U. D. C. v. L. & S. W. Rail. Co.* (1910), 74 J. P. 119; 102 L. T. 328; 26 Digest 576, 2679. A similar provision in a Colonial case was discussed in *Toronto Suburban Ry. v. Toronto Corporation*, [1915] A. C. 590.

(e) Where a tram service was discontinued and the rails filled in with bitumen, it was held that the tramway had not been abandoned and the undertakers were therefore liable for damage resulting from the non-repair of the road (*Broune v. De Luze Car Services and Birkenhead Corpn.*, [1941] 1 K. B. 549; [1941] 1 All E. R. 383).

(f) The raising of sleepers and rails to the level of the road, or the raising of the stone packing to the level of the rails, is maintaining and keeping the road in good condition under this section, and does not require the superintendence of the road authority under s. 26 (*St. Luke's Vestry v. North Metropolitan Tramways Co.* (1876), 1 Q. B. D. 760; 40 J. P. 806; 43 Digest 341, 17). In an unreported Irish case in the Court of Appeal (*R. (Ex parte Dublin Corporation) v. Dublin United Tramways Co.* (Feb. 26, 1889)), where the corporation had called upon the company to alter the level of their track to correspond with an alteration in the level of the road made by the corporation, so as to comply with

**Note to
Section 28.**

s. 65 of the company's private Act (38 & 39 Vict. c. ccix.), which provided that "if . . . the road authority shall alter the level of any road along or across which any part of the tramway is laid, the company may and shall from time to time alter or as the case may be lay their rails so that the uppermost surface thereof shall be on a level with the surface of the road as altered," it was held that s. 8 of the local Act corresponding to s. 28 of the text when read in conjunction with s. 65 of the local Act did not impose a liability upon the company to alter anything but the level of the rails at their own expense. Where a company had statutory power to run trams by steam and had statutory running powers over the line of another company, it was held that this did not authorise them to run over that line when it was defective, and they were held liable in damages to a person who was injured through a car running off the line by reason of its being defective (*Sadler v. South Staffordshire, etc. Tramways Co.* (1889), 23 Q. B. D. 17; 53 J. P. 694; 43 Digest 353, 105). The obligation of a tramway company under this section involves the duty by temporary expedients or permanent work of providing against temporary or recurrent sources of danger to traffic, and failure to discharge this obligation will make the company liable in damages to any person injured by such neglect. Thus the company were held liable for an accident which occurred by reason of their having neglected to sand the road in slippery weather (*Dublin United Tramways Co. v. Fitzgerald*, [1903] A. C. 99; 67 J. P. 229; 43 Digest 344, 37).

As to injury to passengers owing to the negligence of a contractor, see *City of Birmingham Tramways Co., Ltd. v. Law*, [1910] 2 K. B. 965; 74 J. P. 355; 43 Digest 356, 123.

29. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair (a).

Road authority and promoters may contract for paving roads on which tramways are laid.

(a) Where a tramway company entered into a contract with a road authority under this section for the repair of that portion of the road upon which the tramway was laid, it was held that the liability for damage occasioned by the non-repair of that part of the road which would, but for such contract, be cast by s. 28 upon the tramway company, was transferred to the road authority (*Howitt v. Nottingham and District Tramways Co.* (1883), 12 Q. B. D. 16; 43 Digest 345, 43). This decision seems to have been questioned in *Steward v. North Metropolitan Tramways Co.* (1886), 16 Q. B. D. 556; 50 J. P. 324; 38 Digest 136, 998; but it has since been followed in *Aldred v. West Metropolitan Tramways Co.*, [1891] 2 Q. B. 398; 55 J. P. 824; 43 Digest 345, 44; and that case has been followed in *Barnett v. Poplar Corporation*, [1901] 2 K. B. 319; 43 Digest 345, 45.

30. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tubes, wires (a), or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

Provision as to gas and water companies.

1. Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires or apparatus, or not, give seven days' notice to the company, persons, or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice (b) to the promoters to lower or otherwise alter the position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any

Section 30.

difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after receiving not less than forty-eight hours notice for that purpose, which notice the promoters are hereby required to give:

2. The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof, and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct:
3. The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs:
4. The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas:
5. If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which the supply shall be so interrupted.

(a) The promoters may alter the position of the wires of a railway company, and for that purpose may enter upon the land belonging to the railway company (*In re Rhondda U. D. C. and Taff Vale Rail. Co.* (1907), 72 J. P. 45; 97 L. T. 892; 43 Digest 343, 29). As to the provision of guard wires under the L. C. C. Tramways Regulations, see S. R. & O., 1914, No. 1098.

For a case under a local Act where postal telegraph lines were affected by the escape of electricity from the company's wires, see *Postmaster-General v. Blackpool and Fleetwood Tramroad Co.*, [1921] 1 K. B. 114; 85 J. P. 71; 43 Digest 343, 30. See also *Postmaster-General v. Liverpool Corporation*, [1923] A. C. 587; 87 J. P. 157; 42 Digest 895, 60.

(b) This notice may be given at any time until the tramway is constructed (*Hastings Tramways Co. v. Hastings and St. Leonards Gas Co.*, [1906] 2 Ch. 578; 70 J. P. 540; 25 Digest 481, 69).

For protection
of sewers, etc.

31. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district,

Section 31.

the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works (a).

(a) As to the sufficiency of notices under this section, see *Brentford U. D. C. v. London United Tramways Co.*, Times, March 30th, 1901.

32. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority (a) for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes (b), but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; (that is to say,)

Rights of
authorities and
companies, etc.
to open roads.

1. They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:
2. Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work (c):
3. They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as aforesaid:
4. Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:

Section 32. 5. Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters (c).

(a) A railway company who are liable to maintain and repair a bridge over their line, with the approaches and the road thereon, are in respect of such road a road authority within the meaning of this section. Where a railway company for the reconstruction of such a bridge had, after giving the notices specified by this section, removed the rails of a tramway running over the bridge, and temporarily stopped the traffic, it was held that they were not liable to the tramway company for injury to the tramway, loss of traffic, or cost of reinstating the rails, provided they had caused as little detriment or inconvenience as the circumstances admitted. It was held also that if they caused more than the least detriment and inconvenience which the circumstances admitted, they would be liable to the extent to which they had exceeded such least possible detriment and inconvenience (*Wolverhampton Tramways Co., Ltd. v. G. W. Rail. Co.* (1886), 56 L. J. Q. B. 191; 56 L. T. 892; 43 Digest 346, 47).

(b) A telephone company acting under a licence from the Postmaster-General pursuant to the Telegraph Acts, 1863, 1878, and 1892, need not obtain the previous consent of a tramway company before proceeding to break up a street or public road on which tramways are laid, for the purpose of laying telephone wires, even though the tramway company is liable under s. 28 for the repair of that street or road (*Bristol Tramways and Carriage Co. v. National Telephone Co.*, [1899] 2 Ch. 882; 63 J. P. 588; 43 Digest 346, 48).

(c) A gas company executed work in roads along which a tramway ran, part of which work consisted in pipes so laid for the first time since the construction of the tramway, and connecting the same with the mains which had been laid down before the construction of the tramway. In one instance during the progress of the work, where there was a double tramline, the cars of one line were diverted to the other, such diversion being at the request of the gas company. In other instances cars were merely slowed down or stopped for a short time while the workmen got out of the trenches. By reason of the existence of the tramway additional expense was imposed upon the gas company in connecting the new pipes with their mains. It was held that the gas company were entitled to recover such additional expense from the tramway company under sub-s. 5, *supra*, inasmuch as there had been an interruption of the traffic on the tramway within the meaning of sub-s. 2, and the connection of a new service pipe with the main involved an alteration of the main; but that the proviso in sub-s. 5 does not apply in the case of work which is not such as to interrupt the traffic on the tramway (*In re Bristol Gas Co. and Bristol Tramways and Carriage Co., Ltd.*, [1910] 1 K. B. 114; 74 J. P. 35; 25 Digest 481, 70).

Difference
between pro-
motors and
road authority,
etc.

33. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control, exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway, or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated

as referee by the Board of Trade(a) on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs (b). Section 33.

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) By a local Tramway Act incorporating the above Act, the space between the rails and for a distance of eighteen inches beyond each external rail was to be paved by the company, to the satisfaction of the local authority, with wood or other paving to be approved of by the local authority. On an application by the local authority for a *mandamus* to the company to take up the paving so laid down, it was held that a difference had arisen within the meaning of the above section which ought to be determined by a referee appointed by the Board of Trade, and that the *mandamus* ought not to be granted (*R. v. Croydon and Norwood Tramways Co.* (1886), 18 Q. B. D. 39; 51 J. P. 420; 43 Digest 346, 50). And see *R. v. Garrett and Hammersmith Borough Council, Ex parte London United Tramways, Ltd.*, *ante*, p. 4282; *R. v. FitzGibbon*, [1910] 2 I. R. 236. A municipal corporation, as being the road and the local authority, proposed to alter a road within their district on which a tramway had been constructed under this Act, by taking up the existing granite pavement and laying down a wood pavement over the whole of the roadway, including the space between the rails of the tramway and eighteen inches on each side thereof. The company objected to the alteration so far as it concerned the last-mentioned portion of the roadway and claimed to refer the matter under the above section:—*Held*, that the difference was not one within the section, inasmuch as it was not with respect to any interference or control claimed to be exercised by the road authority by virtue of the Act, or to any subject or thing regulated by or comprised in the Act; but with respect to the exercise of a power which belonged to the road authority independently of the Act and was preserved by s. 60 (*Bristol Tramways and Carriage Co. v. Bristol Corporation* (1890), 25 Q. B. D. 427; 55 J. P. 53; 43 Digest 346, 51). An arbitrator appointed to determine a difference arising under this section has jurisdiction to order gas mains already laid down to be lowered so that any new service pipes might be carried horizontally underneath the concrete bed of the tramway; and he can further order such gas mains to be moved laterally to such a distance as to enable access to be obtained to them without interference with the concrete bed (*Re Ilford Gas Co. and Ilford U. D. C.* (1903), 67 J. P. 239; 88 L. T. 236; 25 Digest 481, 68). The provision for arbitration contained in this section ousts the jurisdiction of the High Court with regard to differences coming within the section, and the objection may be taken in the Court of Appeal, though not taken in the High Court. It was provided by the special Act of a tramway company, with which by s. 22 of the Tramways Act, 1870, Parts II. and III. of that Act were incorporated, that if the company failed to maintain and keep in good condition, to the satisfaction of the corporation, the junction of the paving laid and maintained by the company with the surface laid and maintained by the corporation, the corporation might if they thought fit themselves at any time after seven days' notice to the company do the work necessary for the repair and maintenance of the road, and that the expense reasonably incurred by the corporation in so doing should be repaid to them by the company with 5 per cent. added thereto. The corporation did work by way of repair to roads on which tramways belonging to the company were laid, alleging that such work came within the above provision, which the company denied. In an action by the corporation against the company to recover the expenses, and for a declaration of their rights:—*Held*, that the difference must be settled by arbitration under this section (*Norwich Corporation v. Norwich Electric Tramways, Co., Ltd.*, [1906] 2 K. B. 119; 70 J. P. 401; 43 Digest 346, 52). A local Act incorporated ss. 28 and 33 of this Act and imposed a penalty (*inter alia*) for not keeping the rails in repair and so as not to be a danger or annoyance to the ordinary traffic. It was held that the magistrate had jurisdiction to deal with summonses for not keeping the rails in repair as in this instance no question had arisen in regard to the satisfaction of the road authority (*R. v. Garrett and Hammersmith Borough Council, Ex parte London United Tramways, Ltd.*, *ante*, p. 4282). A private Act authorised a company to construct a tramway and other works. It provided (*inter alia*) that "unless otherwise agreed in writing" between the parties, the company should complete the tramway within two years and "carry out to the reasonable satisfaction of the council the widenings" authorised by the Act. No such written agreement was in fact entered into. It was held that until an agreement altering the scheme of works was made, there was an absolute statutory obligation on the company to do the works, and that a landowner whose property had been rendered less valuable by the abandonment of the undertaking was entitled to compensation out of the parliamentary deposit (*In re West Yorkshire Tramways Act*, 1906, [1913] 1 Ch. 170; 36 Digest 284, 319). As to reference of differences under a local Act incorporating this section, see *Regent's Canal Dock Co. v. London C. C.* (1907), 71 J. P. 201; 43 Digest 347, 56; *Joseph Crosfield & Sons, Ltd. v. Manchester Ship Canal Co.*, [1906] A. C. 421; 69 J. P. 441; 38 Digest 57, 336.

Section 34.

PART III.

GENERAL PROVISIONS.

Carriages.

Power for promoters to use tramways with flange-wheeled carriages, etc.

34. The promoters of tramways authorised by special Act and their lessees may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail (a).

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only (b).

No carriage used on any tramway which is hereafter authorised by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

(a) The promoters are consequently occupiers of the land which is *de facto* occupied by the tramway, and, therefore, they are rateable (*Pimlico Tramway Co. v. Greenwich Union* (1873), L. R. 9 Q. B. 9; 38 J. P. 117; 38 Digest 442, 132; *Craig v. Edinburgh Street Tramways Co.* (1874), 1 R. (Ct. of Sess.), 947; *Melbourne Tramway and Omnibus Co. v. Fitzroy Corporation*, [1901] A. C. 153; *Thornton U. D. C. v. Blackpool and Fleetwood Tramroad Co.*, [1909] A. C. 264; 73 J. P. 299; 38 Digest 490, 462; *London United Tramways* (1901), *Ltd. v. Brentford Union* (1907), 71 J. P. 249; 5 L. G. R. 682; 38 Digest 546, 898). With regard to the use of cars for advertising purposes, see a case on the construction of an agreement (*Griffiths and Millington, Ltd. v. Southampton Corporation* (1906), 70 J. P. 179; 22 T. L. R. 301; 43 Digest 348, 72). In rating the undertaking receipts from advertisements must be taken into account (*North Metropolitan Tramways Co. v. St. Mary, Islington* (1874), *Ryde's Met. Rat. App.* 112). As to a contract for advertising on the trams of a company which subsequently becomes merged in a larger undertaking, see *Abrahams, Ltd. v. Campbell*, [1911] S. C. 353; 12 Digest 383, f.

(b) A locomotive used upon a tramway under a special Act is not subject to the provisions of the Highway and Locomotives (Amendment) Act, 1878, *post* (*Bell v. Stockton and Darlington Steam Tramway Co.* (1887), 51 J. P. 804; 3 T. L. R. 511; 43 Digest 348, 75). A tramcar drawn by horses was held to be a "coach" for the purposes of tolls under 7 Geo. 3, c. lxxiii. (*Plymouth, Stonehouse, and Devonport Tramways Co. v. General Tolls Co.* (1898), 14 T. L. R. 531; 43 Digest 347, 59); and a tramcar is a "stage carriage" for the purposes of the Railway Passenger Duty Act, 1842, s. 13, as to overcrowding (*Brian v. Aylward* (1902), 18 T. L. R. 371; 43 Digest 347, 63), and of an Act as to painting up the number of passengers to be carried (*Black v. Neilson* (1897) 25 R. (Ct. of Sess.) (J.) 98). A tramcar may not ply for hire without a licence from the local authority. See *Blackpool and Fleetwood Tramroad Co. v. Bailey, ante*, p. 4237.

Licences to use Tramways (a).

Licences to use the tramway may in certain events be granted to third parties by the Board of Trade.

35. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the Board of Trade (b) by the local authority of such district or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway, is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade (b) may (if they consider that, *prima facie*, the case is one for inquiry), direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the Board (c) may from time to time grant licences to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorised by the special Act, with carriages to be approved by the Board, subject to the following provisions, conditions, and restrictions; that is to say,

1. The licence shall be for any period not less than one year nor more than three years from the date of the licence, but shall be renewable by the Board, if they upon inquiry think fit:

Section 35.

2. The licence shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the Board, having reference to the cause for granting the licence, shall think right :
3. The licence shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run :
4. The licences shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways :
5. The licensee or licensees, and their officers and servants, shall permit one person duly authorised for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey :
6. The Board of Trade (b) may at any time after the granting of any licence revoke, alter, or modify the same for good cause shown to them.

(a) The following sections deal with licences by the Board of Trade (now Ministry of Transport), enabling persons other than the undertakers to use the tramways. For a case of a lease by a corporation to a tramway company pursuant to a local Act, see *R. v. Devonport J.J., Ex parte Devonport Tramways Co.* (1909), 73 J. P. 393 ; 101 L. T. 424 ; 43 Digest 357, 125.

(b) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(c) For a licence granted by a corporation, pursuant to a local Act which required the consent of the Board of Trade being held to be *ultra vires* where such consent was not obtained, see *Salford Corporation v. Eccles Corporation*, [1912] A. C. 465 ; 76 J. P. 249 ; 43 Digest 356, 122.

36. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

In default of payment of tolls licensee's carriages may be detained and sold.

37. Every licensee shall on demand give to an officer or servant authorised in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licensees to give account of passengers carried by them.

38. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Licensees not giving account of passengers carried liable to penalty.

39. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees from any licensee, or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices . . . and it shall be lawful for the promoters or their lessees in the meanwhile

Disputes as to amount of toll to be settled by justice.

Section 39. to detain the carriage, or (if the case so require) the proceeds of the sale thereof (a).

(a) Words relating to Scotland only are omitted from this section.

Owners of
carriages liable
for damage
done by their
servants.

40. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices . . . either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds (a).

(a) Words relating to Scotland only are omitted from this section.

Discontinuance of Tramways.

Tramways to
be removed in
certain cases.

41 (a). If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Board of Trade (b), the said Board, if they think fit, may by Order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such Order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such Order has been made, the road authority of such district may at any time after the expiration of two months from the date of such Order under the authority of a certificate to that effect by the Board of Trade (b), remove the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorised officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

(a) This section relates to the discontinuance of a tramway service. For cases of abandonment of the undertaking (before the work is commenced or completed), decided under the Parliamentary Deposits and Bonds Act, 1892 (12 Halsbury's Statutes 510), see *In re Peckham, Dulwich and Crystal Palace Tramways Bill*, [1910] 2 Ch. 1; 74 J. P. 266; 43 Digest 358, 129; *In re Peckham and East Dulwich Tramways Co.*, [1911] W. N. 15; *In re Southport and Lytham Tramroad Act*, 1900, *Ex parte Heskeith*, [1911] 1 Ch. 120; 36 Digest 283, 318; *In re West Yorkshire Tramways Act*, 1906, [1913] 1 Ch. 170; 36 Digest 284, 319.

(b) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

Insolvency of Promoters (a).

42. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board of Trade, the Board of Trade (b) may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade (b) may, by Order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the Order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

Proceedings in case of insolvency of promoters.

(a) It was held that an unregistered tramway company, incorporated by a special Act, was not within the exception of "railway companies incorporated by Act of Parliament" in s. 199 of the Companies Act, 1862, and could, therefore, be wound up under that section (see now s. 337 of the Companies Act, 1929) (*Re Brentford and Isleworth Tramways Co.* (1884), 26 Ch. D. 527; 10 Digest 1193, 8473). And see *Portsmouth, etc. Tramways Co., In re*, [1892] 2 Ch. 362; 10 Digest 1191, 8453. A company being in liquidation, the Board of Trade, under this section, directed an inquiry to ascertain the solvency of the promoters:—Held: upon application by the official liquidator for an injunction to restrain the inquiry, that it was not a proceeding against the company, and could not be restrained under s. 87 of the Companies Act, 1862 (see now s. 177 of the Companies Act, 1929) (*Re Pontypridd and Rhondda Valleys Tramways Co.* (1889), 58 L. J. Ch. 536; 37 W. R. 570; 10 Digest 959 6573).

Where a petition is presented for winding up a company, the court has power to restrain proceedings before magistrates for penalties against the company (*Re Briton Medical, etc. Association* (1886), 32 Ch. D. 603; 10 Digest 962, 6591).

It was held that, although the company had not been ordered to be wound up, the court would appoint a receiver and manager in an action brought by a holder of overdue debentures of the company to realise his security (*Bartlett v. West Metropolitan Tramways Co.* (No. 1), [1893] 3 Ch. 437; Digest Supp.). And it was further held on a subsequent application by the receiver, that the court had power under this section and s. 44 to make an order for sale of the company's property as a going concern (*Bartlett v. West Metropolitan Tramways Co.* (No. 2), [1894] 2 Ch. 286; 10 Digest 1191, 8449). But this latter decision was overruled in *Marshall v. South Staffordshire Tramways Co.*, [1895] 2 Ch. 36; 10 Digest 1191, 8450, where it was held that the holders of debentures issued by a tramway company governed by this Act (whether incorporated under the Companies Act, 1862, or under a special Act, by which debentures the undertaking of the company and all its property, present and future, including uncalled capital, are charged) are in the event of default by the company entitled only to the appointment of a receiver of the undertaking of the company and the net earnings thereof; and are not entitled to an order for the sale of the undertaking or to the appointment of a manager.

(b) Now the Minister of Transport. See note (a) to s. 1, ante, p. 4272.

Purchase of Tramways (a).

43. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years or within three months after any Order made by the Board of Trade under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing (b) require such promoters to sell, and

Future purchase of undertaking by local authority.

Section 43. thereupon such promoters shall sell (c) to them their undertaking (d), or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) (e) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district (f), such value to be in case of difference determined by an engineer or other fit person nominated as referee (g) by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any Order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such Order in respect of the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a Provisional Order under this Act, and in reference to the same they shall be deemed to be the promoters (h).

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution . . . (i).

The local authority in any district may pay the purchase-money and all expenses incurred by them in the purchase of any undertaking under the authority of this section . . . (k), and shall have the like powers to borrow . . . (k) as if such expenses were incurred in applying for, obtaining, and carrying into effect any Provisional Order obtained by them under this Act.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase-money and expenses, the Board of Trade (l) may by Provisional Order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase-money and expenses.

Every such Provisional Order shall be confirmed in like manner as a Provisional Order under the authority of Part I. of this Act, and until such confirmation such Provisional Order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

(a) It has been the practice of Parliament and of the Board of Trade to vary the provisions of s. 43 as to compulsory purchase by extending the time within which purchase can take place and by providing for more reasonable terms of payment. The variations are numerous and depend entirely on the conditions which the company is willing to concede and the local authority to accept.

It is also usual in special Acts incorporating tramway companies to insert clauses to protect lenders of money to the company in the event of a compulsory sale to the local authority under s. 43 and to give them notice of the rights of the local authority.

(b) For form of notice, see the *Encyclopædia of Forms and Precedents*, Vol. XVII, title *TRAMWAYS*.

(c) See note (c) to s. 44, p. 4294, *post*.

(d) This word is limited by reference to the tramway previously mentioned, viz., the particular tramway which the promoters are empowered to construct by any special Act or Provisional Order. Therefore, where a tramway company has constructed a number of lines under special Acts passed in different years, the local authority may (subject to the leave of the Board of Trade being obtained) purchase so much of any one line as is within its district at the expiration of twenty-one years from the time when the promoters were empowered to construct the line, together with the undertaking as far as it relates

to that particular line, without purchasing the other lines constructed under different special Acts (*North Metropolitan Tramways Co. v. London C. C.* (1895), 60 J. P. 23; 12 T. L. R. 101, C. A. affirming 72 L. T. 536; 43 W. R. 552; 43 Digest 353, 108).

The local authority is not entitled to take possession until the amount of the purchase money has been ascertained and paid (*Manchester Carriage and Tramways Co. v. Manchester Corporation* (1902), 67 J. P. 17; 87 L. T. 678; 43 Digest 355, 120).

(e) The value of the tramway upon a compulsory sale to the local authority must be measured by what it would cost to construct it at the date of such sale, subject to a proper deduction in respect of depreciation (*Edinburgh Street Tramways Co. v. Edinburgh Corporation*, [1894] A. C. 456; 43 Digest 354, 113, and *London Street Tramways Co. v. London C. C.*, [1894] A. C. 489; 43 Digest 355, 115; *London Tramways Co. v. London C. C.*, [1898] A. C. 375; 62 J. P. 675). See also *Re Southampton Tramways Co. and Southampton Corporation* (1899), 63 J. P. 788; 16 T. L. R. 38, C. A. affirming 80 L. T. 236; 43 Digest 355, 116. The principles laid down by the House of Lords in the *Edinburgh Case* were applied by the Court of Appeal in *Oldham, Ashton and Hyde Electric Tramways, Ltd. v. Ashton Corporation*, [1921] 3 K. B. 511; 85 J. P. 181; 43 Digest 355, 119. There the arbitrator had awarded the value of the undertaking at the time of the notice requiring the owner of the tramway to sell, including therein as part of the original cost of establishment the engineer's fees, subject to depreciation, the cost of raising the original capital of the undertaking, interest on capital during construction, and the cost of a temporary diversion of the tramway from a railway bridge in accordance with a provision inserted at the instance of the railway company in the order authorising the construction of the tramway. It was held by ROWLATT, J., and affirmed in Court of Appeal that the engineer's fees should be allowed subject to depreciation, that the cost of raising capital must be disallowed, that the interest on capital was subject to depreciation, and that the cost of the temporary diversion of the tramway must be disallowed. Notwithstanding the practice of Parliament in granting statutory powers to lay tramways in narrow streets, to impose upon the undertakers the obligation to contribute towards the cost of widening such streets, it was held that in assessing the value of the tramway and its appurtenances belonging to a company incorporated before such practice of Parliament came into existence, the amount which the tramway company would, if constructing its tramway at the date of the notice to purchase, have been required to contribute towards the costs of widening streets ought not to be taken into account (*London, Deptford and Greenwich Tramways Co. v. London C. C.*, [1905] 1 K. B. 316; 69 J. P. 98; 43 Digest 355, 118). And as to a local Act excluding the application of s. 43 of this Act, see *Wallasey Tramways Co. v. Wallasey U. D. C.*, Times, November 17th, 1899; affirmed in C. A., 23 M. C. C. 56; and affirmed again in H. L. (1900) 17 T. L. R. 152. For a case as to determination of value under a Colonial Act, see *Melbourne Tramway and Omnibus Co. v. Tramway Board*, [1919] A. C. 667; 88 L. J. P. C. 102.

(f) The local authority purchasing a tramway within their district must pay for all lands, buildings, etc. which are suitable to and used for the purposes of the undertaking within the district, even though such lands, buildings, etc. be situate outside the district (*Manchester Carriage and Tramways Co., Ltd. v. Swinton and Pendlebury Urban Council*, [1906] A. C. 277; 70 J. P. 81; 43 Digest 354, 111); so also they must pay for a depot within the district if suitable to and used for the purpose of the undertaking within the district, although in previous proceedings it has been held suitable to and used for the purpose of the undertaking outside the district (*Re Manchester Carriage and Tramways Co., Ltd. and Ashton-under-Lyne Corporation* (1904), 68 J. P. 576; 43 Digest 353, 110). See also *Manchester Carriage and Tramways Co. and Manchester Corporation* (1902), 67 J. P. 14; 18 T. L. R. 779; varied by consent in C. A. (1903), 19 T. L. R. 439; 43 Digest 353, 109. The fact that the authorised tramway penetrates into a car factory does not render the council liable to purchase either the factory or the land within the factory upon which the tramway is laid, if in fact the factory is not suitable to and used by the company for the purposes of the undertaking; but *quære* whether they are bound to purchase the permanent way of the tramway within the factory (*North Metropolitan Tramways Co., Ltd. v. Leyton U. D. C.* (1908), 72 J. P. 241; 98 L. T. 792; 43 Digest 354, 112).

(g) An Act provided for "the purchase of the gasworks and plant at a price to be determined by arbitration." It was held that the price should be the commercial value of the undertaking as a going concern, and not merely the structural value of the plant (*Hamilton Gas Co., Ltd. v. Hamilton Corporation*, [1910] A. C. 300; 74 J. P. 185; 43 Digest 81, 855). And see *Perth Gas Co., Ltd. v. Perth Corporation*, [1911] A. C. 506; 42 Digest 682, 947.

(h) On a purchase under this section the local authority also becomes liable to income tax as regards the tramway undertaking as successors of the tramway company for the purpose of r. 4 under Cases I. and II. of Sched. D. in s. 100 of the Income Tax Act, 1842 (*Stockham (Surveyor of Taxes) v. Wallasey U. D. C.* (1906), 71 J. P. 244; 5 L. G. R. 200; 28 Digest 41, 209). The local authority are not, however, bound to keep the trams when purchased in their own hands and work them themselves. It is, therefore, no objection to their right to purchase that they may have agreed with a third party to find the purchase-

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Section 43.**

money and work the trams when acquired, although the local authority may need further statutory powers to carry out such a bargain (*Bombay Tramways Co. v. Bombay Corporation* (1904), *Times*, June 6th).

(i) The remainder of this paragraph applies in Scotland only, and is therefore omitted.

(k) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XI, Pt. IV, *ante*, pp. 1194, 1281. See now *ibid.*, s. 195, *ante*, p. 1023.

(l) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

Power of sale.

44. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade (a) sell (b) their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters (c).

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorised.

Where any purchase is made by any local authority under the provision of this section, such local authority . . . (d) shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) See *Wolverhampton Corporation v. British Electric Traction Co.* (1900), *Times*, Friday, November 30th; 22 M. C. C. 545, which was an action for specific performance of a statutory contract to purchase a tramway. The court dismissed a counterclaim for a declaration as to running powers.

A tramway company cannot assign its statutory powers and rights except as authorised by this Act (*Baillie v. Binns* (1903), *Times*, January 31st).

(c) A Provisional Order was obtained by certain promoters for the construction of tramways in a borough. The confirming Act provided that the corporation might purchase the undertaking after the lapse of fourteen years. Shortly afterwards the promoters entered into an agreement to sell the undertaking to an electric traction company and by a later agreement it was sold to the plaintiff company. The confirming Act required the consent of the Board of Trade to such agreements, but in fact no such consents were given. The construction of the tramways was commenced but never completed. After the lapse of fourteen years, as specified in the confirming Act, the corporation gave notice to the promoters and the plaintiff company or "other the promoters" requiring them to sell the undertaking, knowing, however, that the sale to the plaintiff company had not been approved by the Board of Trade. The value of the undertaking having been assessed by an arbitrator, the plaintiff company "and all others the promoters" brought an action to recover the sum fixed by him. It was held that the original promoters were the owners of the undertaking, and that as the corporation had exercised their option to purchase with notice that the transfer to the plaintiff company had not been approved by the Board of Trade, they could not now be heard to say that the promoters were not the legal owners; and further, the corporation were not affected by any equity there might be to compel the promoters to sell to the company (*Hartlepool Electric Tramways Co., Ltd. v. Hartlepool Corporation* (1911), 75 J. P. 507; affirmed, 75 J. P. 537; 9 L. G. R. 1098; 43 Digest 353, 106).

(d) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XI, Pt. IV, *ante*, pp. 1194, 1281. See now *ibid.*, s. 195, *ante*, p. 1023.

Section 45.

Tolls.

45. The promoters or lessees of a tramway authorised by special Act may demand and take, in respect of such tramway, tolls and charges not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways (a).

(a) A municipal corporation owned a tramway constructed under statutory powers. In accordance with a statutory requirement they exhibited in a conspicuous place in their cars a list of fares and appended a special notice stating, as the fact was, that the fares charged were less than the maximum authorised charges, and that in consideration thereof a passenger was only carried on the terms that the maximum amount recoverable from the corporation for injury suffered by a passenger and for which the corporation were legally liable was £25. It was held (by COZENS-HARDY, M.R., upon the construction of the statutes regulating the tramway; by FARWELL, L.J., upon the ground that the corporation were common carriers of passengers at common law in the sense that they were bound to carry according to their profession, and by KENNEDY, L.J., upon both these grounds) that, so long as the tramway was open for public traffic, the corporation were bound to carry any passenger not being an objectionable person who offered himself and was willing to pay the published fare, provided they had accommodation for him, and were not entitled to impose a condition limiting their liability for negligence without giving the passenger the option of travelling at a higher fare without any such condition. *See*, per COZENS-HARDY, M.R., and FARWELL, L.J. If the corporation published alternative lists of fares, one containing the maximum rates and another reduced rates, and gave an option to the passenger to pay either rate but with such a condition attached to the reduced rate, a passenger electing to pay the latter would be bound by the condition (*Clarke v. West Ham Corporation*, [1909] 2 K. B. 858; 73 J. P. 461; 8 Digest 7, 14). *See* also *Baker v. Ellison*, [1914] 2 K. B. 762; 78 J. P. 244; 8 Digest 113, 763. *See* as to the construction of a provision in a Tramway Act that "daily labourers" should be entitled to travel in the morning and evening at a reduced fare (*McDonald v. Brown* (1918), 82 J. P. 173; 87 L. J. K. B. 1119; 43 Digest 351, 99). And *Hutchins v. L. C. C.* (1915), 80 J. P. 193; 85 L. J. K. B. 1177; 8 Digest 114, 769.

Byelaws (a).

46. Subject to the provisions of the special Act authorising any tramway and this Act, Byelaws by
local authority.

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters :

The rate of speed to be observed in travelling upon the tramway :

The distances at which carriages using the tramway shall be allowed to follow one after the other (b).

The stopping of carriages using the tramway (c) :

The traffic on the road in which the tramway is laid (d).

The promoters of any tramway and their lessees may from time to time make regulations,— Promoters may
make certain
regulations.

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them :

For regulating the travelling in or upon any carriage belonging to them (e). And for enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make byelaws for all or any of the aforesaid purposes, and from time to time repeal or alter such byelaws, and make new byelaws, provided that such byelaws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect (f).

Notice of the making of any byelaw under the provisions of this Act shall be published by the local authority or the promoters making the same, by

Section 46. advertisement, according to the regulations contained in Part II. of the Sched. C. to this Act annexed; and unless such notice is published in manner aforesaid such byelaw shall be disallowed by the Board of Trade.

No such byelaw shall have any force or effect which shall be disallowed by the Board of Trade (g) within two calendar months after a true copy of such byelaw shall have been laid before the Board; and a true copy of every such proposed byelaw shall, not less than two calendar months before such byelaw shall come into operation, be sent to the Board of Trade (g), and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

(a) The court will refuse an application for a *mandamus* to make byelaws where the applicant has no greater interest than an ordinary member of the public. So held by CHANNELL and JELL, JJ., in *National Carriage, etc. Union v. Manchester Corporation* (1902), Times, July 9th. But where petitioners appear in opposition to a bill before Parliament, and with the object of protecting their own interests procure the insertion in the Bill of a clause imposing a particular duty upon the promoters or other persons, they will have a sufficient interest in the performance of that duty to support an application by them for a *mandamus* to enforce it, notwithstanding that they are not named in the clause and that the duty is one imposed for the benefit of the public at large. So held by Lord ALVERSTONE, C.J., and PICKFORD, J. (AVORY, J., *dubitante*), in *R. v. Manchester Corporation*, [1911] 1 K. B. 560; 75 J. P. 73; 43 Digest 349, 81.

(b) See *R. v. Manchester Corporation, supra*.

(c) A byelaw required that a steam tramway should be stopped in cases of impending danger:—*Held*, that there was evidence of impending danger to go to the jury in a case where a steam tram was coming down a steep incline towards a pony chaise, the pony being restive, and the driver holding up her whip as a signal to stop the car (*Downing v. Birmingham and Midland Trams* (1888), 5 T. L. R. 40; 36 Digest 60, 374). A local Tramway Act empowered the Board of Trade to make byelaws providing that engines should be brought to a stand at cross streets, and a penalty was imposed on any person offending:—*Held*, that the company might be convicted of an offence against the byelaw (*St. Helens Tramway Co. v. Wood* (No. 2) (1891), 56 J. P. 71; Digest Supp.).

(d) The Board of Trade under a power given to them by a special Act, made a byelaw that “no steam shall be emitted from the engines so as to constitute any reasonable ground of complaint to passengers or to the public.” H., a driver, was resting his engine, which was not in good repair, and he could not help emitting steam. One person complained:—*Held*, that H. was rightly convicted (*Hartley v. Wilkinson* (1885), 49 J. P. 726; 43 Digest 348, 77). Under a similar byelaw forbidding the emission of “smoke or steam” a conviction for emitting “smoke and steam” was upheld (*Davis v. Loach* (1886), 51 J. P. 118; 43 Digest 349, 78). Where a byelaw provided that no smoke or steam should be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public, and the penalty was the same whichever class of persons had ground of complaint, and a conviction stated that the defendant permitted smoke to escape contrary to the byelaw, without stating in terms any reasonable grounds of complaint to the passengers or the public, or either of them, it was held that the statement was insufficient, and the conviction must be quashed (*Cotterill v. Lempriere* (1890), 24 Q. B. D. 634; 54 J. P. 583; 43 Digest 349, 79). A tramway company were authorised to use steam engines on their line, and the Board of Trade were authorised to make regulations, and also to make byelaws for regulating the use of bells, whistles, and other warning apparatus fixed to the engine. The Board of Trade made a regulation that every engine should carry a bright lamp during certain hours. One day, a servant allowed the lamp to remain unlighted for some part of the journey:—*Held*, that the regulation was valid as a regulation and need not be included in the byelaws, and that the company were liable for the neglect of the servant in not keeping the lamp alight (*St. Helens Tramways Co. v. Wood* (No. 1) (1891), 56 J. P. 70; 60 L. J. M. C. 141; 43 Digest 349, 80). This case was followed in *Heston & Co. v. M'Sweeney*, [1905] 2 I. R. 47, in which it was held that a byelaw requiring the owner of every vehicle to cause a light to be attached thereto when in use between certain hours in public streets is not unreasonable or void as making a master liable for the *quasi*-criminal act of a servant. Byelaws made under the Metropolitan Public Carriages Act, 1869, requiring vehicles on highways to carry lights between sunset and sunrise are applicable to tramcars (*Adamson v. Miller* (1900), 16 T. L. R. 185; 44 Sol. J. 278). And see note (a) to s. 85 of the L.G.A., 1888, *post*, p. 4762.

(e) A byelaw requiring payment of a fare when demanded, though before completion of journey, is valid (*Egginton v. Pearl* (1875), 40 J. P. 56; 33 L. T. 428; 43 Digest 349, 89), and though it does not make an intent to defraud or to avoid payment an ingredient of the offence (*Tuffley v. Tate* (1906), 71 J. P. 21; 5 L. G. R. 448; 8 Digest 112, 753). As to amount of fares, see *Edinburgh Street Tramways Co. v. Torbain* (1877), 3 App. Cas. 58;

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Section 46.**

43 Digest 351, *o*. A passenger who had paid for and obtained a ticket which entitled him to travel to a certain destination, having alighted at a stopping place short of that destination, and walked some distance and then got on another car travelling to his original destination, but who refused to pay the legal fare, claiming to go on under his original ticket, was held liable to be convicted under a byelaw requiring payment of the legal fare when demanded (*Bastable v. Metcalfe*, [1906] 2 K. B. 288; 70 J. P. 343; 8 Digest 98, 658). A byelaw that a passenger shall deliver up his ticket when required, or pay the fare for the distance travelled over, is a reasonable byelaw. A passenger travelling under such circumstances, who shows his ticket, but refuses to give it up on the ground that his journey has not terminated, is liable to the penalty prescribed by the byelaw (*Heap v. Day* (1886), 51 J. P. 213; 34 W. R. 627; 43 Digest 350, 92). So also is a passenger who has lost his ticket and refuses to pay the fare again (*Hanks v. Bridgman*, [1896] 1 Q. B. 253; 60 J. P. 312; 43 Digest 350, 93), or a passenger who refuses to show his ticket (*Lowe v. Volp*, [1896] 1 Q. B. 256; 60 J. P. 232; 43 Digest 350, 91; *Hunt v. Green* (1906), 71 J. P. 18; 96 L. T. 23; 43 Digest 350, 94). But a passenger who paid his fare but declined to accept a ticket because it bore an indorsement purporting to limit the liability of the local authority in cases of accident or injury to passengers, and allowed it to fall on the floor of the car, and when the ticket inspector asked him for it pointed it out, but refused to touch or pick it up or to pay his fare a second time was held not liable under a similar byelaw (*Wilson v. Fearnley* (1905), 69 J. P. 165; 92 L. T. 647; 43 Digest 350, 95). And see *M'Intyre v. M'Pherson*, [1913] S. C. 21. The secretary of a tram company was summoned for allowing an excessive number of passengers in a car. At the hearing, it was objected that the secretary was not the proper defendant, whereupon the justices substituted the name of the company, and convicted them:—*Held*, that the conviction was bad (*City of Oxford Tramway Co. v. Sankey* (1890), 54 J. P. 564; 6 T. L. R. 151; 33 Digest 329, 421). Where a byelaw forbade the company to allow more persons to be carried in a carriage than a specified number, it was held that a passenger who was incommoded by an excessive number of passengers was entitled to prosecute the conductor (*Badcock v. Sankey* (1890), 54 J. P. 564; 6 T. L. R. 170; 43 Digest 348, 70). As to the right of a corporation as tramway authority to rely by way of defence to an action for negligence, on the byelaws made by them for the regulation of their tramways, see *Hughes v. Leeds Corporation* (1902), *Times*, August 4th; 24 M. C. C. 387; see also *Pickering v. Belfast Corporation*, [1911] 2 I. R. 224. A local Act provided that no conductor should carry in or on the carriage a greater number of passengers than that specified in the licence. A licence was granted in respect of a carriage to carry 32, 16 inside and 16 outside:—*Held*, that a conductor was guilty of an offence by carrying 19 seated and 8 standing inside, and 5 on the footboard, making altogether 32 (*Stokell v. Baldwin* (1892), 8 T. L. R. 346). In the case of a tramway car having upper and lower compartments, and having the upper compartment covered in, the expression “inside” in s. 13 of the Railway Passenger Duty Act, 1842, and in s. 27 of the L. C. C. (Tramways and Improvements) Act, 1913, which sections regulate the number of passengers to be carried “inside” a London tramway car, normally and on special occasions, refers only to the lower compartment (*Phesse v. Fisher*, [1915] 1 K. B. 572; 79 J. P. 174; 43 Digest 347, 68). As to the liability of the promoters for an accident occurring through overcrowding allowed by their servant contrary to their express orders, see *Byrne v. Londonderry Tramway Co.*, [1902] 2 I. R. 457. A byelaw of a corporation provided that passengers “should depart from or get off a car by the hindermost or conductor’s platform and not otherwise.” It was held that the expression “hindermost or conductor’s platform” must in each case be construed in relation to the particular passenger and the journey on which he was engaged, and meant the platform which was or would be the hindermost during the journey which the passenger in question had taken or was about to take (*Monkman v. Stickney*, [1913] 2 K. B. 377; 77 J. P. 368; 43 Digest 349, 86). And see *Baker v. Ellison*, *ante*, p. 4295.

(f) A byelaw that no person shall swear or use obscene or offensive language whilst in or upon any carriage was held not *ultra vires*, although s. 28 of the Town Police Clauses Act, 1847, was in force in the same city and also a local Act imposing a penalty on every person who should use any profane, indecent or obscene language to the annoyance of the inhabitants or passengers (*Gentel v. Rapps*, [1902] 1 K. B. 160; 66 J. P. 117; 43 Digest 349, 85).

The local authority of a borough may make a byelaw under this section for regulating the number of passengers to be carried in and upon tramcars, and the extent of accommodation to be afforded to them. The assent of the lessees of the line under s. 46 is not necessary to the validity of such byelaw (*Smith v. Butler* (1885), 16 Q. B. D. 349; 50 J. P. 260; 43 Digest 349, 83).

(g) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

47. Any such byelaw may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing

Penalties may be imposed in byelaws.

Section 47. offence ten shillings for every day during which the offence continues (*a*) but all byelaws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid.

(*a*) Penalties cannot be imposed in advance (*R. v. Struve, etc. Glamorganshire JJ.* (1895), 59 J. P. 584; 43 Digest 345, 40).

Power to local authority to license drivers, conductors, etc.

48. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licences with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge or of using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages (*a*), and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connection therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority.

(*a*) See s. 171 of the P. H. A., 1875, *post*; ss. 37 *et seq.* and 68 of the Town Police Clauses Act, 1847, *ante*, pp. 4236, 4246, and the Town Police Clauses Act, 1889, *post*, p. 4784. As to the confirmation of these regulations, see the Public Health (Confirmation of Byelaws) Act, 1884, *post*, p. 4669, which abrogates the effect of the case of *Wallasey Tramway Co. v. Wallasey L. B.* (1883), 47 J. P. N. 821; 42 Digest 859, 117.

The effect of the provisions in the text appear to be that a tramway car must be licensed as a hackney carriage (*Blackpool and Fleetwood Tramroad Co. v. Bailey*, [1920] 1 K. B. 380; 84 J. P. 1; 43 Digest 347, 61).

For a case which arose on the construction of a byelaw prohibiting wilful obstruction of an officer, see *Baker v. Ellison*, [1914] 2 K. B. 762; 78 J. P. 244; 8 Digest 113, 763.

Offences.

Penalty for obstruction of promoters in laying out tramway.

49. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for wilful injury or obstruction to tramways, etc.

50. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon (*a*);

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

(*a*) This provision does not affect the right of the public to the use of the street so long as there is no wilful obstruction. The mere presence of a cart upon a tramway line, whereby a tramcar has to proceed for some distance at a walking pace, is not necessarily a wilful obstruction (*Hall v. Linton* (1879), 7 R. (Ct. of Sess.) (J. C.) 2). As to the duty of the conductor and the responsibility of the company in case of a drunken man trying to force his way on to a tramcar in motion and thereby endangering his own life, see

Delany v. Dublin United Tramway Co. (1892), 30 L. R. Ir. 725; 8 Digest 71, *x*. See also *Note to Section 50.* as to what amounts to wilful obstruction of a tramcar, *Hartley v. Chadwick* (1904), 68 J. P. 512; 43 Digest 357, 127.

51. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings (a). Penalty on passengers practising frauds on the promoters.

(a) Proceedings under this section are of a criminal character, and, therefore, the company are liable to an action for malicious prosecution at the suit of a person against whom a summons under this section has been dismissed (*Rayson v. South London Tramways Co.*, [1893] 2 Q. B. 304; 58 J. P. 20; 14 Digest 29, 7). In order to obtain a conviction under this section it is necessary to show that the person acted with a fraudulent intention (*Nimmo v. Lanarkshire Tramways Co.*, [1912] S. C. (J.) 23; 43 Digest 351, p).

52. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name and residence is unknown to such officer or servant until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law (a). Transient offenders.

(a) See *Howitt v. Nottingham Tramways Co.*, ante, p. 4283. The plaintiff was a passenger in one of the defendants' tramcars, and tendered to the conductor in payment of a fare a half-sovereign, which the conductor supposed to be counterfeit, and he therefore gave the plaintiff in charge to the police:—*Held*, that as this section gave the conductor authority to detain a person attempting to defraud, the company were liable for his acts in an action for false imprisonment (*Furlong v. South London Tramways Co.* (1888), 48 J. P. 329; 1 Cab. & El. 316; 8 Digest 117, 779). See also *Percy v. Glasgow Corporation*, [1922] 2 A. C. 299; 86 J. P. 201; 13 Digest 404, 1262. But where the conductor had printed instructions not to give passengers into custody under this section without the authority of an inspector or timekeeper except in cases of assault, but a conductor without such authority gave a passenger in charge for passing bad money it was held that the company were not liable (*Charleston v. London Tramways Co.* (1888), 36 W. R. 367; 4 T. L. R. 157; affirmed in C. A., 4 T. L. R. 629; 32 Sol. J. 557; 8 Digest 117, 780). As to the liability of the company for an assault by a conductor on a passenger delaying to pay his fare, see *Smith v. North Metropolitan Tramways Co.* (1891), 55 J. P. 630; 7 T. L. R. 459; 8 Digest 114, 767; and for an assault by a conductor acting under a misapprehension, *Radley v. L. C. C.* (1913), 109 L. T. 162; 29 T. L. R. 680; 34 Digest 148, 1165. The remedy of the tramway authority is not limited to that given by the text. The authority may treat the offender as a trespasser and eject him. But if the conductor ejects a passenger wrongfully the authority are liable for his act (*Whittaker v. L. C. C.*, [1915] 2 K. B. 676; 79 J. P. 437; 43 Digest 351, 101, approved in *Hutchins v. L. C. C.* (1915), 80 J. P. 193; 85 L. J. K. B. 1177; 8 Digest 114, 769).

53. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature: and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence; and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact (a). Penalty for bringing dangerous goods on the tramway.

(a) It seems that a person cannot be convicted of sending dangerous goods under this section unless guilty knowledge is proved (*Hearne v. Garton* (1859), 2 E. & E. 266; 23 J. P. 693; 8 Digest 137, 900). The undertakers are not liable in damages for injuries

Note to Section 55.

occasionally to passengers by dangerous goods brought into the car by another passenger, unless the plaintiff can prove that they were guilty of negligence in allowing such goods to be brought there (*East Indian Rail. Co. v. Kalidas Mukerjee*, [1901] A. C. 396; 8 Digest 74, 496).

Penalty for persons using tramways with carriages with flange wheels, etc.

54. If any person (except under a lease from or by agreement with the promoters, or under licence from the Board of Trade, as by this Act provided) uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds (a).

(a) A contrivance whereby a small disc might be let down into the groove of the rail, and thus operate as a flange, was held to be within this section (*Cottam v. Guest* (1880), 6 Q. B. D. 70; 45 J. P. 95; 43 Digest 347, 65). See also *Liverpool Tramways Co. v. Liverpool Omnibus Co.*, [1870] W. N. 126; *Manchester Corporation and Manchester Carriage and Tramway Co. v. Andrews* (1889), 5 T. L. R. 470.

Miscellaneous.

Promoters or lessees to be responsible for all damages.

55. The promoters or lessees, as the case may be, shall be answerable for all accidents, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries (a).

(a) This section only applies to a wrongful act or default and does not make the promoters or lessees answerable for mere accident caused without negligence by their use of tramcars (*Brooklehurst v. Manchester, Bury, Rochdale and Oldham Steam Tramways Co.* (1886), 17 Q. B. D. 118; 51 J. P. 55; 43 Digest 351, 102; *Breslin v. Dublin United Tramway Co.* (1911), 45 Ir. L. T. 220). But it is otherwise if negligence be proved. See *Sadler v. South Staffordshire, etc. Tramways Co.* (1889), 23 Q. B. D. 17; 53 J. P. 694; 43 Digest 353, 105; *Pickering v. Belfast Corporation*, [1911] 2 I. R. 224. As to injury caused by the snapping of an overhead electric wire, see *Neale v. East Ham Corporation* (1905), Times, February 22nd. For a case where a nuisance was caused by the use of creosoted wood blocks, see *West v. Bristol Tramways Co.*, [1908] 2 K. B. 14; 72 J. P. 243; 38 Digest 27, 147. As to what is sufficient evidence of negligence, see *Leaver v. Pontypridd U. D. C.* (1911), 76 J. P. 31; 56 Sol. J. 32; 36 Digest 60, 379. For a case in which a "trolley arm" fell and caused injury to a passenger, see *Newberry v. Bristol Tramways and Carriage Co., Ltd.* (1912), 29 T. L. R. 177; 8 Digest 73, 492; and a stay projecting from beneath the car and causing a plaintiff to fall, *Gibb v. Edinburgh and District Tramway Co., Ltd.*, [1912] S. C. 580. A cab had stopped to take up a passenger in a steep and narrow street; one of its wheels rested upon a tramway rail. The driver of a tramway car proceeding down the incline saw the obstruction fifty yards away and whistled. He was going slowly, but he did not stop his car, because he expected up to the last moment that the cab would be drawn out of his way, and then, from the steepness and greasiness of the street, was unable to do so. The car caught the cab, and damaged both it and its horse. In an action for damages against the company, it was held that the driver was in fault in not stopping his car when he first saw the cab, and that the cabman was not guilty of any contributory negligence (*M'Dermid v. Edinburgh Street Tramways Co.* (1884), 12 R. (Ct. of Sess.) 15; and see *Rattee v. Norwich Electric Tramway Co.* (1902), 18 T. L. R. 562; 38 Digest 16, 87). The promoters are not liable for injuries arising from the acts of their servants outside the scope of their employment and in direct defiance of their orders. See *Byrne v. Londonderry Tramway Co.*, [1902] 2 I. R. 457. A tramway company acting under Provisional Order and using the best known system of electrical traction were held not to be liable for electrical disturbance in the wires of a telephone company under licence from the Postmaster-General (*National Telephone Co. v. Baker*, [1893] 2 Ch. 186; 57 J. P. 373; 38 Digest 46, 273). As to the responsibility of an electric tram company for a leakage of electricity causing disturbance in adjacent telegraphic apparatus belonging to a private company, see *Eastern and South African Telegraph Co. v. Cape Town Tramways Co.*, [1902] A. C. 381; 38 Digest 49, 286. And see *Postmaster-General v. Blackpool and Fleetwood Tramroad Co.*, and *Postmaster-General v. Liverpool Corporation*, ante, p. 4284. A tramway company have no right to clear their lines after a snowstorm by scattering salt so as to render the road dangerous for other traffic (*Ogston v. Aberdeen District Tramways Co.*, [1897] A. C. 111; 61 J. P. 436; 26 Digest 439, 1562). But they may use the water system of cleaning the rails from dirt so long as they do not cause a nuisance thereby (*Middlesbrough*

**Note to
Section 55.**

Corporation v. Imperial Tramways Co. (1901), Times, May 11th). A tramway was held to be a railroad, and therefore an engineering work within the meaning of the now repealed Workmen's Compensation Act, 1897 (*Fletcher v. London United Tramways, Ltd.*, [1902] 2 K. B. 269; 66 J. P. 596; 43 Digest 339, 2). Where a local authority acquire and work a tramway under statutory powers, negligence on the part of their servants in driving the tramcars is a neglect or default in the execution of a public duty or authority within the meaning of s. 1 (a) of the Public Authorities Protection Act, 1893, and consequently an action against the local authority in respect of such negligence must be commenced within six months after the occurrence of the negligence (*Parker v. London C. Co.*, [1904] 2 K. B. 501; 68 J. P. 239; 38 Digest 103, 739). And see *Clarke v. West Ham Corporation*, the facts of which are set out at p. 4295, ante; *Martin v. Dublin United Tramways Co., Ltd.*, [1908] 2 I. R. 13; 8 Digest 85, s; *Cass v. Edinburgh and District Tramways Co.*, post, p. 4303. On the subject of the extent of the liability imposed by this section reference may be made to *McSherry v. Glasgow Corporation*, [1917] S. C. 156 (contributory negligence by riding on step); *Taylor v. Dumbarton Tramways Co.*, [1918] S. C. 96 (contributory negligence of children allowed to play round car); *Craig v. Glasgow Corporation* (1919), 35 T. L. R. 214; 36 Digest 92, 607 (evidence of negligence); *Tynan v. Dublin United Tramways Co.*, [1919] 2 I. R. 445 (joint negligence); *Ross v. Glasgow Corporation*, [1919] S. C. 174 (remoteness of damage); *Watt v. Glasgow Corporation*, [1919] S. C. 300 (negligence of conductors); *Buchanan v. Glasgow Corporation*, [1921] S. C. 658; Digest Supp. (passenger riding on platform); *Milliken v. Glasgow Corporation*, [1918] S. C. 857 (negligence of driver of overtaken vehicle).

56. All tolls, penalties, and charges under this Act, or under any byelaw made in pursuance of this Act, may be recovered and enforced as follows: in England before two justices of the peace in manner directed by the Summary Jurisdiction (England) Acts . . . (a). Recovery of
tolls, penalties,
etc.
11 & 12 Vict.
c. 43, etc.

(a) The remainder of this section relates only to Scotland. As to restraining proceedings against a company in liquidation, see *Re Briton Medical, etc. Association*, ante, p. 4291.

The principle of *Gardner v. L. C. & D. Rail. Co.* (1867), 2 Ch. App. 201, does not prevent the levying by distress of penalties imposed on a tramway company for non-repair of their rails (*Pegge v. Neath District Tramways Co.*, [1895] 2 Ch. 508). An appeal from this decision was compromised, [1896] 1 Ch. 684; 39 Digest 55, 671.

57. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway . . . (a). Right of user
only.

(a) The remainder of this section (as to turnpike roads) and the whole of the following section (as to arrangements between turnpike trustees and the promoters) were repealed as obsolete by S. L. R. A., 1893 (No. 2).

* * * * *

59. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals; nor shall any such owner, lessee or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals. Reservation of
rights of
owners,
etc., of mines.

60. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation (a). Reserving
powers of
street authorities
to widen,
etc. roads.

(a) See *Bristol Trams and Carriage Co. v. Bristol Corporation*, ante, p. 4287.

61. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons. Power for
local or police
authorities to
regulate traffic
in roads.

Section 62.

Reservation of
rights of public
to use roads.

62. Nothing in this Act or in any byelaw made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway (a).

(a) This section reserves to the public the right of using every part of the road including the rail so long as they do not use wheels with flanges, or wheels suitable only to the rails (*Manchester Corporation and Manchester Carriage and Tramway Co. v. Andrews* (1889), 5 T. L. R. 470).

Regulating
inquiries before
referee
appointed by
the Board
of Trade.

63. Every inquiry which by this Act the Board of Trade (a) are empowered to make or direct shall be made in accordance with the following provisions :

1. The inquiry shall be held in public before an officer to be appointed in that behalf by the Board hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him :
2. Ten days notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade (a) shall have directed the inquiry, of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit :
4. The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds : Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :
5. The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry :
6. Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury :
7. The referee shall make his report to the Board of Trade (a) in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

(a) Now the Minister of Transport. See note (a) to s. 1, p. 4272, *ante*.

Rules for
carrying Act
into effect.

64. The Board of Trade (a) may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters (b) :

1. The proceedings to be had before the Board under this Act :
 2. The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits :
 3. The plans and sections of any works to be deposited by promoters under this Act :
 4. As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.
- Any rules made in pursuance of this section shall be deemed to be within

the powers conferred by this Act, and shall be of the same force as if enacted **Section 64.**
in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

(a) Now the Minister of Transport. See note (a) to s. 1, p. 4272, *ante*.

(b) Rules have been made under this section, those now in force being dated January, 1892 (see *ante*, p. 4057). As to the construction of such rules, see *In re Bradford Tramways Co.*; *In re Lowestoft, Yarmouth and Southwold Tramways Co.*; *In re Tynemouth Borough Tramways Co.*; *In re Colchester Tramways Co.*, *ante*, pp. 4275-6; *Cass v. Edinburgh and District Tramways Co., Ltd.*, [1909] S. C. 1068.

SCHEDULES.

SCHEDULE A (a).

[Sect. 3.]

PART I.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate. (b)
ENGLAND AND WALES.		
The city of London and the liberties thereof.	The mayor, aldermen, and commons of the city of London.	The consolidated sewers rate.
The metropolis (1) . . .	The Metropolitan Board of Works (c).	The metropolitan consolidated rate.
Boroughs (2) . . .	The mayor, aldermen, and burgesses acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act, with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts (d).	The local board . . .	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.

Notes.

(1) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

Schedule A. (2) "Borough" shall mean any place for the time being subject to the Municipal Corporations Act, 1835 (e).

5 & 6 Will. 4,
c. 76.

- (a) So much of this Schedule as relates to Scotland only is omitted.
- (b) See now the R. and V. Act, 1925, *ante*, p. 2113.
- (c) The powers and duties of the Metropolitan Board of Works are now transferred to the London C. C. by the L. G. A., 1888, s. 40.
- (d) Now the L. G. A., 1933. See s. 1 of that Act, *ante*, p. 739.
- (e) Now the L. G. A., 1933.

PART II.

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1) mentioned in Schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the metropolis (1) formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855.	The board of works for the district appointed for the purpose of the Metropolis Management Act, 1855.

Note (1).—The term "metropolis" has in this Part the same meaning as in Part I. of this Schedule.

[Sect. 4.]

PART III.

Approval of Application by Local Authority for a Provisional Order.

The approval of any intended application for a Provisional Order by a local authority shall be in the manner following; that is to say,

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution . . . Where any such resolution relating to the metropolis as the same is defined in Part I. of this Schedule . . . has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved (a).

(a) Words relating to Scotland only are here omitted.

SCHEDULE B.

[Sect. 6.]

[PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of intended Application.

(1) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this Schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

(2) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county. Schedule B.

(4) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district is situate in England . . . (a).

(a) Words relating to Scotland only are here omitted.

PART II.

Sect. 6.]

Deposit on or before 30th November.

(1) The promoters are to deposit—

1. A copy of the advertisement published by them.

2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade (a) in that behalf.

(2) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made . . . (b).

(3) The documents aforesaid are also to be deposited at the office of the Board of Trade (a).

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

(b) Words relating to Scotland only are here omitted.

PART III.

[Sect. 6.]

Deposit on or before 23rd December.

(1) The promoters are to deposit at the office of the Board of Trade (a)—

1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade (a), and praying for a Provisional Order.

2. A printed draft of the Provisional Order as proposed by the promoters, with any Schedule referred to therein.

3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short Title of Undertaking.*]

To the Board of Trade (a),

The memorial of the promoters of [*short title of undertaking*]:

Showeth as follows:

1. Your memorialists have published, in accordance with the requirements of the Tramways Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,

C. D.,

Promoters.

(a) Now the Minister of Transport. See note (a) to s. 1, *ante*, p. 4272.

Schedule B.

PART IV.

[Sect. 13.]

Deposit and Advertisement of Provisional Order when made.

(1) The promoters are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace (a) . . . where the documents required to be deposited by them under Part II. of this Schedule were deposited.

(2) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each.

(3) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or in case the same shall no longer be published, in some other newspaper published in the district.

(a) Words relating to Scotland only are here omitted.

SCHEDULE C.

[Sect. 19.]

PART I.

Notice and Deposit of Lease by Local Authority.

One month before any lease is submitted to the Board of Trade (a), notice of the intention to make such lease shall be given by advertisement.

(1) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

(2) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district to which it relates is situate in England . . . (b).

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

(a) Now the Minister of Transport. See note (a) to s. 1, ante, p. 4272.

(b) Words relating to Scotland only are here omitted.

[Sect. 46.]

PART II.

Notice of Byelaws.

Within one month after the making of any byelaw notice of the making of the same, and a copy of such byelaw, shall be published by advertisement in manner following:

(1) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such byelaws; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2) The advertisement is also, in every case, to be inserted once at least in the London . . . Gazette, accordingly as the district to which it relates is situate in England . . . (a).

(a) Words relating to Scotland only are here omitted.

THE FAIRS ACT, 1871.

Section 1.

(34 & 35 VICT. c. 12) (a).

An Act to further amend the law relating to Fairs in England and Wales.

[25th May, 1871.]

1. This Act may be cited as "The Fairs Act, 1871."

Short title.

(a) See the L. G. A., 1894, ss. 27 (1) (e) and 32, *post*. See also the Fairs Act, 1873, *post*, p. 4327. The preamble and clause of enactment to this Act are repealed by the S. L. R. A., 1893 (No. 2).

2. In this Act the term "owner" means any person or persons, or body of commissioners, or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent, or Act of Parliament, or otherwise howsoever. Interpretation.

3. In case it shall appear to the Secretary of State for the Home Department, upon representation duly made to him by the magistrates of any petty sessional district (a), within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair should be abolished, it shall be lawful for the said Secretary of State for the Home Department, with the previous consent in writing of the owner for the time being of such fair, or of the tolls or dues payable in respect thereof, to order that such fair shall be abolished accordingly: Provided always, that notice of such representation, and of the time when it shall please the Secretary of State for the Home Department to take the same into consideration, shall be published once in the London Gazette, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered. Order for abolition of fair.

(a) This representation will now come from the district council.

4. When and so soon as any such order as aforesaid shall have been made by the Secretary of State for the Home Department, notice of the same shall be published in the London Gazette, and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall be abolished. Publication of order.

THE GASWORKS CLAUSES ACT, 1871.

(34 & 35 VICT. c. 41) (a).

An Act to amend the Gasworks Clauses Act, 1847.

[13th July, 1871.]

1. The Gasworks Clauses Act, 1847, and this Act, shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act. Construction. 10 & 11 Vict. c. 15.

(a) See the Gasworks Clauses Act, 1847, *ante*, p. 4163, and note (a) to s. 1, *ante*, p. 4163. The preamble to this Act is repealed by the S. L. R. A., 1893 (No. 2).

See also the Gas Undertakings Act, 1934, s. 9 (3), Vol. V., *post*, by which this Act can be applied to the undertakers under a special order made under s. 10 of the Gas Regulation Act, 1920 (see Vol. V. and 8 Halsbury's Statutes 1287).

2. This Act may be cited as "The Gasworks Clauses Act, 1871."

Short title.

Section 3.

Application of
Act.
33 & 34 Vict.
c. 70.

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any Provisional Order (a) made under the authority of the Gas and Water Facilities Act 1870, save where the said provisions are expressly varied or excepted by a such special Act or Provisional Order; and every such special Act and Provisional Order is in this Act included in the term "the special Act" (b).

(a) Under the Gas Regulation Act, 1920, Vol. V., *post*, special orders may be made lieu of provisional orders.

(b) The effect of ss. 1, 3 is that this Act is incorporated with special Acts passed before 1871 which incorporate the Act of 1847 (*Commercial Gas Co. v. Scott* (1875), L. R. 10 Q. 400; 40 J. P. 214; 25 Digest 469, 4; *Dudley Gas Co. v. Warrington* (1881), 45 J. P. 64 50 L. J. M. C. 69; 25 Digest 488, 106; *South Metropolitan Gas Light and Coke Co. v. Noa* (1889), 61 L. T. 556; 5 T. L. R. 448; 25 Digest 470, 7). See also *Leamington Priors Co. v. Davis*, cited in the note to s. 35, *post*, p. 4316.

Interpretation.
10 & 11 Vict.
c. 15.
33 & 34 Vict.
c. 70.

4. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870.

The term "prescribed" in this Act shall mean prescribed by the special Act:

The term "premises" in this Act shall include house and building:

And the expression "superior courts" or "court of competent jurisdiction" in this Act or in any Act wholly or partially incorporated herewith shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by statute.

GENERAL PROVISIONS.

Prohibition
against erecting
gasworks else-
where than on
lands specified
in special Acts.

5. The undertakers shall not manufacture gas, or any residual products, (a) except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

(a) As to the right of a gas company to manufacture residuals, see *Deuchar v. Gas Light and Coke Co.*, [1925] A. C. 691; 89 J. P. 177; 25 Digest 471, 10.

Sale of
superfluous
lands.

8 & 9 Vict. c. 18.

6. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking, and the provisions of the Lands Clauses Consolidation Act, 1845 ss. 128 to 132 (both sections inclusive), shall apply to any such sale and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

Receipts of
guardians, etc.
to be sufficient
discharge.

7. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers for the same.

For appoint-
ment of
receiver.

8. The mortgagees of the undertakers may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England . . . by the appointment of a receiver . . .; and in order to authorise the appointment of a receiver . . . in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the

Section 3.

Application of Act.

33 & 34 Vict. c. 70.

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any Provisional Order (a) made under the authority of the Gas and Water Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or Provisional Order; and every such special Act and Provisional Order is in this Act included in the term "the special Act" (b).

(a) Under the Gas Regulation Act, 1920, Vol. V., *post*, special orders may be made in lieu of provisional orders.

(b) The effect of ss. 1, 3 is that this Act is incorporated with special Acts passed before 1871 which incorporate the Act of 1847 (*Commercial Gas Co. v. Scott* (1875), L. R. 10 Q. B. 400; 40 J. P. 214; 25 Digest 469, 4; *Dudley Gas Co. v. Warmington* (1881), 45 J. P. 649; 50 L. J. M. C. 69; 25 Digest 488, 106; *South Metropolitan Gas Light and Coke Co. v. Noakes* (1889), 61 L. T. 556; 5 T. L. R. 448; 25 Digest 470, 7). See also *Leamington Priors Gas Co. v. Davis*, cited in the note to s. 35, *post*, p. 4316.

Interpretation.

10 & 11 Vict.

c. 13.

33 & 34 Vict.

c. 70.

4. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870.

The term "prescribed" in this Act shall mean prescribed by the special Act:

The term "premises" in this Act shall include house and building:

And the expression "superior courts" or "court of competent jurisdiction" in this Act or in any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by statute.

GENERAL PROVISIONS.

Prohibition against erecting gasworks elsewhere than on lands specified in special Acts.

5. The undertakers shall not manufacture gas, or any residual products, (a) except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

(a) As to the right of a gas company to manufacture residuals, see *Deuchar v. Gas Light and Coke Co.*, [1925] A. C. 691; 89 J. P. 177; 25 Digest 471, 10.

Sale of superfluous lands.

8 & 9 Vict. c. 18.

6. The undertakers may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter acquire, and which shall not be required for the purposes of the undertaking, and the provisions of the Lands Clauses Consolidation Act, 1845, ss. 128 to 132 (both sections inclusive), shall apply to any such sale; and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

Receipts of guardians, etc. to be sufficient discharge.

7. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers for the same.

For appointment of receiver.

8. The mortgagees of the undertakers may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England . . . by the appointment of a receiver . . .; and in order to authorise the appointment of a receiver . . . in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the

application for a receiver is made shall not be less than in the whole one thousand pounds, or such sum as shall be specified in the special Act (a). **Section 8.**

(a) Words relating to Scotland and Ireland only are omitted from this section.

9. Nothing in this or the special Act shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them (a). Undertakers not exempted from indictment.

(a) See Gasworks Clauses Act, 1847, s. 29, and note thereto, *ante*, p. 4172. See also *Giblin v. District Committee of Lanarkshire C. C.*, [1927] S. L. T. 563 (nuisance from defective mains).

10. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands, may, if they think fit, subject to the provisions of that Act, and of the Lands Clauses Consolidation Acts Amendment Act, 1860, grant to the undertakers any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rent-charges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easement, rights, or privileges as aforesaid (a). Power to take easements, etc. by agreement. 23 & 24 Vict. c. 100.

(a) See Lands Clauses Consolidation Act, 1845, s. 7, *ante*, p. 4107, and notes thereto.

SUPPLY OF GAS TO OWNERS AND OCCUPIERS OF PREMISES.

11. The undertakers shall (a), upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any main (b) of the undertakers, or such other distance as may be prescribed (c), give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe (that may be necessary for such purpose, subject to the conditions following; (that is to say), Undertakers to furnish sufficient supply of gas to owners and occupiers within the limits of the special Act.

The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of gas shall—

Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required, and the day (not being an earlier day than a reasonable time (d) after the date of the service of such notice) upon which such supply is required to commence;

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that the rent payable for the same shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply (e); and

Give to the undertakers (if required by them so to do) security (f) for the payment to them of all monies which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them (e).

Provided always, that the undertakers may, after they have given a supply of gas for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case

Section 11. any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues (*g*).

(a) The Board of Trade has power under s. 29 of the Electric Lighting Act, 1882, *post*, p. 4657, to relieve gas undertakers from their obligation to supply gas in cases where there is a sufficient supply of electric light and the supply of gas has consequently ceased to be remunerative.

(b) By s. 17 (3) of the Gas Undertakings Act, 1934, Vol. V., *post*, no pipe laid by virtue of *ibid.*, sub-s. (1), under which bulk supplies may be supplied by means of pipes from one of two adjoining undertakers to the other, is to be deemed to be a main within the meaning of this section as applied, unless gas is supplied directly from that pipe to any person other than undertakers. Further by s. 17 (3), no pipe laid under para. (a) or para. (b) of sub-s. (2) of s. 17 is to be deemed to be such a main, these pipes being (a) a pipe outside the authorised limits of supply of either of two undertakers one of whom is authorised to give bulk supplies to the other under special order, and (b) a pipe laid by undertakers authorised under special order to lay a pipe outside their limits for the purpose of facilitating supply within them.

(c) Upon the true construction of s. 6 of the Metropolis Gas Act, 1860 (8 Halsbury's Statutes 1242), a gas company is prohibited from furnishing to a customer a supply of gas for the purpose of consumption by him within a district assigned to another company, notwithstanding that the part of the customer's property through which the supply passes is within the district assigned to the company desirous of furnishing the supply (*Gas Light and Coke Co. v. South Metropolitan Gas Co.* (1889), 54 J. P. 373; 62 L. J. Ch. 123; 25 Digest 491, 114. And see *Att.-Gen. v. West Gloucestershire Water Co.*, *ante*, p. 4178. As to furnishing supplies to premises outside the limits of supply, see the Gas Undertakings Act, 1929, s. 5, Vol. V., *post*).

(d) See as to what is a reasonable time, *South Metropolitan Gas Light and Coke Co. v. Noakes* (1889), 61 L. T. 356; 5 T. L. R. 448; 25 Digest 470, 7.

(e) By s. 6 (6) of the Gas Undertakings Act, 1934, Vol. V., *post*, nothing in that section, which relates to charges for gas and publication of prices by the undertakers, is to be taken to affect the rights conferred by this section upon undertakers of requiring contracts to be entered into and security given.

(f) See s. 16, *post*, p. 4311.

(g) If the owner of premises be adjudicated a bankrupt, the official receiver is not entitled to call on the company to continue the supply of gas, and where he has paid arrears of gas rates under protest in order to avoid the cutting off of the supply, the trustee in bankruptcy cannot recover back the arrears so paid from the gas company (*Ex parte Mason, In re Smith*, [1893] 1 Q. B. 323; 57 J. P. 72; 25 Digest 476, 39). Receivers and managers on behalf of debenture holders, whether appointed under a deed or by the court, are not on entering into possession entitled to demand a supply of gas without paying the arrears of gas rent due from the company that issued the debentures (*Paterson v. Gas Light and Coke Co.*, [1896] 2 Ch. 476; 60 J. P. 532; 25 Digest 476, 40). This case was distinguished in regard to the supply of electricity in *Granger v. S. Wales Electrical Power Distribution Co.*, [1931] 1 Ch. 551; Digest Supp. And see *Husey v. Gas Light and Coke Co.* (1902), 18 T. L. R. 299; 25 Digest 476, 41.

Quality of gas. 12. (a) The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound . . . (b).

(a) See hereon the provisions of the Gas Regulation Act, 1920, Vol. V., *post*.

(b) Certain words in this section were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

13. Every consumer of gas supplied by the undertakers shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of the Sale of Gas Act, 1859, and being a legal meter within the meaning of the said Act, or by a meter supplied or approved by the undertakers: Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same shall be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which when duly tested according to the rules contained in the said Act for regulating measures used in sales of gas is found to be correct within the meaning of the said Act.

Undertakers
may require
consumers to
use meters.
22 & 23 Vict.
c. 95.

Section 11. any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues (*g*).

(*a*) The Board of Trade have power under s. 29 of the Electric Lighting Act, 1882, *post*, p. 4657, to relieve gas undertakers from their obligation to supply gas in cases where there is a sufficient supply of electric light and the supply of gas has consequently ceased to be remunerative.

(*b*) By s. 17 (3) of the Gas Undertakings Act, 1934, Vol. V., *post*, no pipe laid by virtue of *ibid.*, sub-s. (1), under which bulk supplies may be supplied by means of pipes from one of two adjoining undertakers to the other, is to be deemed to be a main within the meaning of this section as applied, unless gas is supplied directly from that pipe to any person other than undertakers. Further by s. 17 (3), no pipe laid under para. (*a*) or para. (*b*) of sub-s. (2) of s. 17 is to be deemed to be such a main, these pipes being (*a*) a pipe outside the authorised limits of supply of either of two undertakers one of whom is authorised to give bulk supplies to the other under special order, and (*b*) a pipe laid by undertakers authorised under special order to lay a pipe outside their limits for the purpose of facilitating supply within them.

(*c*) Upon the true construction of s. 6 of the Metropolis Gas Act, 1860 (8 Halsbury's Statutes 1242), a gas company is prohibited from furnishing to a customer a supply of gas for the purpose of consumption by him within a district assigned to another company, notwithstanding that the part of the customer's property through which the supply passes is within the district assigned to the company desirous of furnishing the supply (*Gas Light and Coke Co. v. South Metropolitan Gas Co.* (1889), 54 J. P. 373; 62 L. J. Ch. 123; 25 Digest 491, 114. And see *Att.-Gen. v. West Gloucestershire Water Co.*, *ante*, p. 4178. As to furnishing supplies to premises outside the limits of supply, see the Gas Undertakings Act, 1920, s. 5, Vol. V., *post*).

(*d*) See as to what is a reasonable time, *South Metropolitan Gas Light and Coke Co. v. Noakes* (1839), 61 L. T. 556; 5 T. L. R. 448; 25 Digest 470, 7.

(*e*) By s. 6 (6) of the Gas Undertakings Act, 1934, Vol. V., *post*, nothing in that section, which relates to charges for gas and publication of prices by the undertakers, is to be taken to affect the rights conferred by this section upon undertakers of requiring contracts to be entered into and security given.

(*f*) See s. 16, *post*, p. 4311.

(*g*) If the owner of premises be adjudicated a bankrupt, the official receiver is not entitled to call on the company to continue the supply of gas, and where he has paid arrears of gas rates under protest in order to avoid the cutting off of the supply, the trustee in bankruptcy cannot recover back the arrears so paid from the gas company (*Ex parte Mason, In re Smith*, [1893] 1 Q. B. 323; 57 J. P. 72; 25 Digest 476, 39). Receivers and managers on behalf of debenture holders, whether appointed under a deed or by the court, are not on entering into possession entitled to demand a supply of gas without paying the arrears of gas rent due from the company that issued the debentures (*Paterson v. Gas Light and Coke Co.*, [1896] 2 Ch. 476; 60 J. P. 532; 25 Digest 476, 40). This case was distinguished in regard to the supply of electricity in *Granger v. S. Wales Electrical Power Distribution Co.*, [1931] 1 Ch. 551; Digest Supp. And see *Husey v. Gas Light and Coke Co.* (1902), 18 T. L. R. 299; 25 Digest 476, 47.

Quality of gas.

12. (*a*) The quality of the gas supplied by the undertakers shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound . . . (*b*).

(*a*) See hereon the provisions of the Gas Regulation Act, 1920, Vol. V., *post*.

(*b*) Certain words in this section were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

13. Every consumer of gas supplied by the undertakers shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of the Sale of Gas Act, 1859, and being a legal meter within the meaning of the said Act, or by a meter supplied or approved by the undertakers; Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same shall be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which when duly tested according to the rules contained in the said Act for regulating measures used in sales of gas is found to be correct within the meaning of the said Act.

Undertakers
may require
consumers to
use meters.
22 & 23 Vict.
c. 66.

14. The undertakers shall supply to any owner or occupier of premises within the limits of the special Act requiring the same a meter for registering gas supplied by them: Provided always, that such owner or occupier shall, if required, previous to receiving such meter, give to the undertakers security for payment to them of the price of such meter if he desires to purchase the same, or of the rent of such meter if he desires to hire the same (a). **Section 14.**
Undertakers to supply meters.

(a) This section imposes upon undertakers an obligation to affix meters (*Clayton v. Pontypridd U. D. C.*, [1918] 1 K. B. 219; 82 J. P. 246; 25 Digest 483, 76).

15. No consumer shall connect any meter with any pipe through which gas is supplied by the undertakers to such meter, or disconnect any meter from any such pipe, unless he shall have given to the undertakers not less than twenty-four hours notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shilling (a). Meters not to be connected or disconnected without notice.

(a) As to the recovery of this penalty, see s. 44, *post*, p. 4318. The giving of notice under this section does not affect the liability of a person to be convicted of an offence against s. 18 of the Act of 1847, *ante*, p. 4169, for substituting a larger pipe to increase the supply of gas (*Wood v. West Ham Gas Co.* (1885), 49 J. P. 662; 52 L. T. 817; 25 Digest 479, 55). Where a gas company cut off the supply of gas, and the owner of the meter proceeded to remove it, it was held that he was a consumer within this section, and damages were awarded for injuries caused by an explosion consequent on the disconnected pipe, which was still charged from the main, being broken in the removal of the meter (*Paterson v. Blackburn Corporation* (1892), 9 T. L. R. 55; 25 Digest 482, 75).

16. Where any owner or occupier is required by the special Act to give security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined, on the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties. Nature and amount of security.

17. Every consumer of gas supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him whereby any gas of the undertakers is registered in proper order for correctly registering such gas, and in default of his so doing the undertakers may cease to supply gas through such meter. The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense of the undertakers if the meter be found in proper order, but otherwise at the expense of the consumer (a). Consumer to keep his meter in proper order

(a) Where gas is supplied by a penny-in-the-slot meter, and the customer is not negligent in the custody of the meter, he is not liable to pay over again for gas supplied should the pennies be abstracted from the meter by robbery (*Edmundson v. Longton Corporation* (1902), 19 T. L. R. 15; 25 Digest 477, 42). See also the cases collected in *Michael and Will on Gas and Water*, 6th ed., at p. 233.

18. The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas (a), and such meters and fittings shall not be subject to distress, or to the landlord's remedy for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the persons in whose possession the same may be. Power to undertakers to let meters.

(a) See s. 23, *post*, p. 4313; see also ss. 39, 41, *post*, p. 4317.

Section 19.

Undertakers
to keep meter
let for hire in
repair.

19. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer in proper order for correctly registering gas, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times.

Register of gas
meters to be
prima facie
evidence.

20. The register of the meter shall be prima facie evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered by the undertakers: Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties (a).

(a) See *South Metropolitan Gas Co. v. Bermondsey Borough Council* (1901), 17 T. L. R. 520; *In re Adolphe Crosbie, Ltd., Johnson and Hughes v. Adolphe Crosbie, Ltd.* (1909), 74 J. P. 25; 39 Digest 55, 674.

Power to enter
buildings for
ascertaining
quantities of
gas consumed.

21. Any officer appointed by the undertakers may at all reasonable times enter any building or land lighted with gas supplied by the undertakers in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

By s. 21 (1) of the Gas Undertakings Act, 1934, Vol. V., *post*, the powers of entry and inspection conferred on officers appointed by undertakers by this section as applied to any undertakers by enactment, is to include power to enter, at all reasonable times, any premises in which there is a service pipe connected with the gas mains of the undertakers, in order to inspect the meters, fittings and works for the supply of gas, except in a case where the occupier of the premises has applied in writing to the undertakers for the disconnection of the service pipe from the mains and the undertakers have failed to disconnect it within a reasonable time.

Power to
remove meter
and fittings.

22. In all cases in which a consumer of gas supplied by the undertakers ceases to require a supply of such gas, and in all cases in which the undertakers are authorised to take away and cut off the supply of gas from any premises, it shall be lawful for the undertakers, their agents, or workmen, after twenty-four hours notice in writing, under the hand of the secretary or other properly authorised officer of the undertakers, to the occupier, or if unoccupied, then to the owner or lessee, or to the agent or the owner or lessee, of any premises in which any pipes, meters, fittings, or apparatus belonging to the undertakers are laid or fixed, and through or in which the supply of gas is from any such cause discontinued, to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such pipes, meters, fittings, or apparatus, repairing all damage caused by such entry or removal.

By s. 21 (3) of the Gas Undertakings Act, 1934, Vol. V., *post*, the notice required to be given by this section, as applied to any undertakers by enactment, before entering any unoccupied premises under it may, in a case where the owner of the premises is unknown to the undertakers and cannot be ascertained after diligent enquiry, be given by affixing it upon a conspicuous part of the premises not less than 48 hours before the premises are entered; but where entry is made on premises which could not lawfully have been made apart from the new provision, the premises are to be left no less secure than they were immediately before they were entered. By *ibid.*, sub-s. (4), in a case where a person entering into occupation of any premises previously supplied with gas by any undertakers does not take a supply from them or does not hire such of the pipes, meters, fittings or apparatus on the premises as belong to them, the power of entering the premises and

removing pipes, meters, fittings or apparatus thereon belonging to the undertakers, conferred by this section as applied to the undertakers by enactment, may be exercised in like manner as in the cases specified in the section.

Note to
Section 22.

By s. 20 (3) of the Gas Undertakings Act, 1934, Vol. V. and 27 Halsbury's Statutes 319, undertakers authorised by enactment to cut off gas supplies on default by occupiers may, subject to the provisions of this section, exercise like powers of entry as are exercisable hereunder.

23. In case any person who shall have been supplied with gas by the undertakers shall neglect or refuse to pay the amount due in respect of such supply, any justice may issue his summons to such person, requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid; and if on the appearance of such person, or in default of appearance after proof of the service of the summons, either personally or at the last known place of abode or of business of such person, no sufficient cause can be shown to the contrary, any justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such justice shall seem just and reasonable (a).

Recovery of
charges for gas.

(a) It seems to be doubtful whether the sum due will now be recoverable as a civil debt under the S. J. A., 1879, ss. 6, 35, 47. See 52 J. P. 316. As to the effect of liquidation or bankruptcy on the right to distrain, see *Ex parte Hill, In re Roberts* (1877), 6 Ch. D. 63; 5 Digest 957, 7845, and *Ex parte Harrison, In re Peake, post*, p. 4317.

SUPPLY OF GAS TO LOCAL AUTHORITIES.

24. The undertakers shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case and the prices charged to private consumers in the district (a).

Supply and
price of gas
to public
lamps.

(a) See, however, s. 29 of the Electric Lighting Act, 1882, *post*, p. 4657, under which the Board of Trade have power in certain cases to relieve gas undertakers from obligations to supply gas. In a case which turned upon the construction of a special Act a company were held entitled to the full price for gas supplied to public lamps though by reason of exceptional frosts they had been unable to afford the full supply (*In re Richmond Gas Co. and the Richmond Corporation*, [1893] 1 Q. B. 56; 56 J. P. 776; 25 Digest 478, 48). A Bill promoted by a gas company to raise the price of gas to private consumers does not affect the rights, privileges or duties of the local authority, being a large consumer for public lighting in the district, so as to enable the local authority to pay the costs of opposing the Bill out of public funds under their control, either under the former Borough Funds Acts or independently (*Att.-Gen. v. Swansea Corporation*, [1898] 1 Ch. 602; 62 J. P. 408; 33 Digest 82, 533). The undertakers have no right to lay a connection pipe to a public lamp through private property (*Bellamy v. Liverpool United Gas Light Co.* (1904), 68 J. P. 540; 2 L. G. R. 1182; 25 Digest 472, 20). Where an agreement for the supply of gas for public lighting was indefinite in point of time and contained no provision for determination by either party, it was held on the construction of the agreement that it might be determined by notice (*Crediton Gas Co. v. Crediton U. D. C.*, [1928] Ch. 447; 92 J. P. 76; Digest Supp.).

25. The gas supplied to the public lamps within the limits of the special Act shall be consumed by meter, at the option either of the local authority of the district or the undertakers, and in case of its being consumed by meter the meter shall be provided and fixed by the undertakers, and be paid for by the party requiring it.

As to consumption of
gas supplied to
the public
lamps.

If the gas is supplied to the public lamps in any district by average meter indication, the undertakers shall, for securing uniformity of consumption

Section 25. between metered and unmetered lamps, from time to time provide the public lamps in such district with proper self-acting pressure regulators and burners to the satisfaction of the local authority of such district; and the average amount of the indications of all the metres attached to the public lamps within such district under the control of the local authority shall, except as hereinafter mentioned, be deemed to be the amount consumed by each such lamp in such district.

Governors for street lamps.

26. In case gas is supplied to the public lamps in any district by the undertakers, they or the local authority of such district may, at their own expense, cause to be affixed to each lamp the instrument known as a street lamp governor, and the undertakers or such local authority (as the case requires) shall be entitled to have access thereto for the purpose of examining the same.

Settlement of differences by arbitration.

s & 9 Vict. c. 16.

27. Any difference which may arise between the undertakers and any local authority in relation to the supply or consumption of gas to or by such local authority shall be from time to time settled by arbitration in manner provided by the Companies Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration.

TESTING OF GAS (a).

Testing place.

28. The undertakers shall cause to be provided, at the place prescribed and within the prescribed time, a testing place, with apparatus therein, for the purposes following, or such of them as may be prescribed by the special Act, that is to say,—

1. For testing the illuminating power of the gas supplied :

2. (b)

The said apparatus shall be in accordance with the regulations (c) prescribed in Part I. of the Sched. A. to this Act annexed, or according to such rules as may from time to time be substituted in lieu thereof by any special Act, and shall be so situated and arranged as to be used for the purpose of testing the illuminating power . . . (b) of the gas supplied by the undertakers, and the undertakers shall at all times thereafter keep and maintain such testing place and apparatus in good repair and working order.

(a) See, hereon, s. 5 (3) and s. 19 of the Gas Regulation Act, 1920, Vol. V., *post*.

(b) Certain words here were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

(c) As to subsequent improvements in such apparatus, see *Brentford Gas Co. v. Chiswick U. D. C.* (1908), 72 J. P. 378 ; 6 L. G. R. 725 ; 25 Digest 479, 53.

Appointment and powers of gas examiners.

29. The local authority of any district within the limits of the special Act, where the gas is not supplied by such local authority, may after the passing of the special Act from time to time appoint, or may appoint and keep appointed, a competent and impartial person to be a gas examiner to test the gas at the testing place provided in conformity with the provisions of this Act; and such gas examiner may there test the illuminating power . . . (a) of the gas supplied by the undertakers, on any or every day between the hours of five o'clock and ten o'clock in the afternoon from the first day of October to the thirty-first day of March, both inclusive, and on any or every day between the hours of eight o'clock and eleven o'clock in the afternoon from the first day of April to the thirtieth day of September, both inclusive (b).

(a) Certain words here were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

(b) The provisions of this section have been superseded by s. 4 (3) and s. 19 of the Gas Regulation Act, 1920, Vol. V., *post*. It was held under the superseded section

that testing might be carried on on Sundays (*London C. C. v. South Metropolitan Gas Co.*, [1904] 1 Ch. 76; 68 J. P. 5; 25 Digest 493, 125), and that an action would lie at the instance of the local authority to enforce the right of the gas examiners to test accordingly (*ibid.*). See now s. 5 of the Gas Regulation Act, 1920, Vol. V. and 8 Halsbury's Statutes 1283.

The L. G. B. informed a rural district council that it did not appear to them that the council had any power under the section to appoint a gas examiner to test the gas supplied in the parishes forming the rural district. They were of opinion that the parish councils in the district within the limits of the gas company were the local authority for the purposes of the Act.

Note to
Section 29.

30. Where no such gas examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of consumers of the gas of the undertakers, not being less than five, by order in writing may appoint some competent and impartial person to be gas examiner, and such person may at any time within the hours aforesaid, on producing the said order, enter on the premises of the undertakers, and there test the illuminating power . . . (b) of the gas supplied by them (b).

Two justices
may appoint
gas examiners.

(a) Certain words here were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

(b) The provisions of this section have been superseded by s. 4 (4) and s. 19 of the Gas Regulation Act, 1920, Vol. V. and 8 Halsbury's Statutes 1283, 1291.

31. The undertakers may, if they think fit, on each occasion of the testing of the gas by the gas examiner, be represented by some officer, but such officer shall not interfere in the testing.

Representation
of undertakers.

32. (a) Any tests taken in pursuance of this Act shall be taken in accordance with the rules prescribed in Part II. of the Sched. A. to this Act annexed.

Mode of testing.

(a) See hereon s. 5 of the Gas Regulation Act, 1920, Vol. V., *post*.

33. The gas examiner shall, on the day immediately following that on which the testing of the illuminating power . . . (a) of the gas has been conducted, make and deliver a report of the results of his testing to the local authority or justices by whom he was appointed, and to the undertakers, and such report shall be receivable in evidence.

Report of gas
examiner.

(a) Certain words here were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

34. The undertakers shall give to the gas examiner and to his assistants, and to every local authority within the limits of the special Act, and their agents, access to the testing place, and shall afford all facilities for the proper execution of this Act; and in case the undertakers make default in complying with any of the provisions of this section they shall for every such default be liable to a penalty not exceeding five pounds to the local authority or to the persons making the application (a).

Access to
testing
place.

(a) See hereon s. 5 (3) and s. 19 of the Gas Regulation Act, 1920, Vol. V., *post*.

ACCOUNTS.

35. The undertakers shall fill up and forward to the local authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual statement of accounts, made up to the thirty-first day of December then next preceding, as near as may be in the form and containing the particulars specified in the Schedule B. to this Act annexed.

Accounts.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy.

Section 35. The Board of Trade, with the consent of the undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the undertaking, or of better carrying into effect the objects of this section.

In case the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (a).

(a) This section is now superseded by s. 15 of the Gas Regulation Act, 1920, Vol. V., *post*. A local Act which incorporated the Gasworks Clauses Act, 1847, except so far as it might be varied by the special Act, prescribed by s. 32 a special form in accordance with which the annual accounts of the company were to be made up, in lieu of the provisions contained in s. 38 of the Act of 1847. By s. 49 of the Act of 1847 undertakers are not to be exempted from any general Act relating to gasworks which may be passed in any future session. The appellants made out their annual statement of accounts in the form prescribed by s. 32 of their special Act, and did not furnish to the respondent, on application, a copy of an annual statement in the form prescribed by the text:—*Held*, distinguishing *Dudley Gas Co. v. Warmington*, *ante*, p. 4308, that as the appellants' special Act prescribed the form in which the annual statement of accounts was to be made up, the provisions in the text relating to the form of accounts did not apply (*Leamington Priors Gas Co. v. Davis* (1886), 18 Q. B. D. 107; 51 J. P. 360; 25 Digest 470, 6).

PENALTIES.

Penalty for failure to supply gas.

36. Whenever the undertakers neglect or refuse to give a supply of gas to any owner or occupier of premises within the limits of the special Act entitled to the same . . . (a), they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (b).

Whenever the undertakers neglect or refuse to supply gas as by this Act required to all or any of the public lamps in accordance with the provisions of this Act, they shall be liable to a penalty not exceeding forty shillings for each default (c).

If it shall be proved to the satisfaction of any two justices, not being shareholders in the undertaking, after hearing the parties, that on any day the gas supplied by the undertakers is . . . (a) of less illuminating power . . . (a) than it ought to be according to the provisions of this or the special Act, the undertakers shall in every such case forfeit and pay to the local authority or other persons making application for testing the gas such sum not exceeding twenty pounds as the justices shall determine.

Penalties not cumulative.

Penalties imposed on the undertakers for one and the same offence by several Acts of Parliament shall not be cumulative, and for such purpose the special Act and the Acts incorporated therewith shall be deemed several Acts.

(a) Certain words here were repealed by the Gas Undertakings Act, 1934, s. 33 (3), Sched. III., Pt. III., Vol. V. and 27 Halsbury's Statutes 328, 335.

(b) A company who improperly cut off a supply of gas are liable under this section (*Commercial Gas Co. v. Scott* (1875), L. R. 10 Q. B. 400; 40 J. P. 214; 25 Digest 469, 4). The remedy under this section or by indictment are the only remedies for the supply of insufficient or impure gas. No action will lie against the undertakers (*Clegg, Parkinson & Co. v. Earby Gas Co.*, [1896] 1 Q. B. 592; 25 Digest 475, 31). Judgment in the High Court on a case stated by justices on an information under this section is a judgment in a criminal cause or matter, and no appeal lies to the Court of Appeal (*Southport Corporation v. Birkdale U. D. C.* (1897), 76 L. T. 319; 18 Cox, C. C. 537; 14 Digest 553, 6291).

(c) As to the liability of the company when the supply to public lamps has been prevented by exceptional frosts, see *In re Richmond Gas Co. and Richmond Corporation*, *ante*, p. 4313. In view of s. 7 of the Gasworks Clauses Act, 1847, *ante*, p. 4165, the undertakers are not liable to penalties under this section for neglect or refusal to supply gas to a lamp in a private passage where the owner objects to their laying the pipe (*Bellamy v. Liverpool United Gas Light Co.* (1904), 68 J. P. 540; 2 L. G. R. 1182; 25 Digest 472, 20).

Cost of experiment to be paid

37. Where the gas examiner is appointed by the justices as aforesaid, the costs of and attending such experiment, including the remuneration to be

paid to the person making the same, and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the undertakers shall be paid, together with such penalty, by the undertakers, but in the event of no penalty being imposed the costs shall be in the discretion of the justices (a). Section 37.
according to
event.

(a) See as to appointment of gas examiners, s. 4 (4) of the Gas Regulation Act, 1920, Vol. V. and 8 Halsbury's Statutes 1283.

38. Every person who wilfully, fraudulently, or by culpable negligence injures or suffers to be injured any pipes, meter, or fittings belonging to the undertakers, or alters the index to any meter, or prevents any meter from duly registering the quantity of gas supplied, or fraudulently abstracts, consumes, or uses gas of the undertakers, shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding five pounds, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipes, meter, or fittings belonging to the undertakers, or altered the index to any meter, or prevented any meter from duly registering the quantity of gas supplied, the undertakers may also, until the matter complained of has been remedied, but no longer, discontinue the supply of gas to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using gas of undertakers, when such meter is under the custody or control of the consumer, shall be *prima facie* evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter. Penalty for
injuring
meters.

RECOVERY OF GAS RENTS.

39. In case any consumer of gas supplied by the undertakers leaves the premises where such gas has been supplied to him without paying the gas rent or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears (a). Incoming
tenants not
liable to pay
arrears of gas
rents, etc.

(a) See *Gas Light and Coke Co. v. Mead* (1876), 40 J. P. 662; 45 L. J. M. C. 71; 25 Digest 476, 36; *Cannon Brewery Co. v. Gas Light and Coke Co.*, [1904] A. C. 331; 68 J. P. 461; 25 Digest 476, 37; *Ex parte Mason, In re Smith*, and *Paterson v. Gas Light and Coke Co.*, *ante*, p. 4310.

40. If any person supplied with gas or with any gas meter or fittings by the undertakers neglect to pay to the undertakers the rent due for such gas or the rent (a) or money due to the undertakers for the hire or fixing of such meter, or any expenses lawfully incurred by the undertakers in cutting off the gas from the premises of such person, the undertakers may recover the sum so due in like manner as a penalty under this Act. Recovery of
rents, etc.

(a) This is not a *rent* within the meaning of the Bankruptcy Act, 1869, s. 34. See *Ex parte Harrison, In re Peake* (1884), 13 Q. B. D. 753; 5 Digest 958, 7853.

41. Whenever any person neglects to pay any rent or sum due and payable by him to the undertakers, the undertakers may recover the same with full costs of suit, in any court of competent jurisdiction, and the remedy of the undertakers under this enactment shall be in addition to their other remedies for the recovery of such rent or sum. Recovery of
sums due to
undertakers.

Section 42.

LEGAL PROCEEDINGS.

Contents of
summons or
warrant.

42. Any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof or in a schedule thereto, several names and several sums.

Warrant of
distress shall
include costs.

43. Any justice who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money.

Summary
proceedings.

10 & 11 Vict.
c. 15.

44. All offences and penalties under this Act, and all money forfeited, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by the Gasworks Clauses Act, 1847, with respect to the recovery of penalties (*a*).

(*a*) See the Gasworks Clauses Act, 1847, s. 40, *ante*, p. 4175, incorporating the Railways Clauses Consolidation Act, 1845, ss. 140 *et seq.*, *ante*, p. 4159.

Service of
notices by
undertakers.

45. Every notice which the undertakers are by this Act required to serve upon any person shall be served by being delivered to the person for whom it is intended, or by being left at his usual or last known place of abode, or sent by post addressed to such persons, or if such person or his address be not known to the undertakers, and cannot after due inquiry be found or ascertained, then by being affixed for three days to some conspicuous part of the premises to which such notice relates.

Liability to gas
rent not to
disqualify
justices from
acting.

46. No justice or judge or any county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act.

SCHEDULES.

[Sect. 28.]

SCHEDULE A.

PART I.

Regulations in respect of Testing Apparatus.

1. *The apparatus for testing the illuminating power of the gas shall consist of the improved form of Bunsen's photometer, known as Letheby's open 60-inch photometer, or Evans' inclosed 100-inch photometer, together with a proper meter, minute clock, governor, pressure gauge, and balance.*

The burner to be used for testing the gas shall be such as shall be prescribed.

The candles used for testing the gas shall be sperm candles of six to the pound, and two candles shall be used together.

2. (*a*)

(*a*) Para. 2, repealed by the Gas Undertakings Act, 1934, *post*.

[Sects. 12, 32.]

PART II.

*Rules as to mode of Testing Gas.**I.—Mode of Testing for Illuminating Power.*

The gas in the photometer is to be lighted at least fifteen minutes before the testings begin, and it is to be kept continuously burning from the beginning to the end of the tests.

Each testing shall include ten observations of the photometer made at intervals of a minute.

The consumption of the gas is to be carefully adjusted to five cubic feet per hour.

The candles are to be lighted at least ten minutes before beginning each testing, so as to arrive at their normal rate of burning, which is shown when the wick is slightly bent and the tip glowing. The standard rate of consumption for the candles shall be

20 grains each per hour. Before and after making each set of ten observations of the photometer the gas examiner shall weigh the candles, and if the combustion shall have been more or less per candle than 120 grains per hour, he shall make and record the calculations requisite to neutralise the effects of this difference. **Schedule A.**

The average of each set of ten observations is to be taken as representing the illuminating power of that testing.

II. (a)

(a) Para. II. repealed by the Gas Undertakings Act, 1934, *post*.

SCHEDULE B (a).

(a) This Schedule is omitted because of the provision of s. 15 of the Gas Regulation Act, 1920, Vol. V. and 8 Halsbury's Statutes 1290.

THE LOCAL GOVERNMENT BOARD ACT, 1871.

(34 & 35 VICT. c. 70) (a).

An Act for constituting a Local Government Board, and vesting therein certain functions of the Secretary of State and Privy Council concerning the Public Health and Local Government, together with the powers and duties of the Poor Law Board. [14th August, 1871.]

PRELIMINARY.

1. This Act may be cited as "The Local Government Board Act, 1871." **Short title.**

(a) See 21 & 22 Vict. c. 97, *ante*, p. 4249.

ESTABLISHMENT OF LOCAL GOVERNMENT BOARD (a).

2. A Board shall be established, to be called the Local Government Board, and all powers and duties vested in or imposed on the Poor Law Board by the several Acts of Parliament relating to the relief of the poor and any other Acts, or vested in or imposed on one of her Majesty's principal Secretaries of State, by the enactments in that behalf mentioned in the first part of the Schedule annexed hereto, so far as such powers and duties relate to England (b), or vested in or imposed on her Majesty's most honourable Privy Council by the enactments in that behalf specified in the second part of the said Schedule, shall be transferred to and imposed on the said Local Government Board, and except as otherwise provided by this Act, shall be exercised and performed by such Board in like manner and form, and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before the passing of this Act have been exercised and performed by the authorities in whom the same were then vested respectively, or as near thereto as circumstances admit.

Establishment
of Local
Government
Board.

(a) A Minister of Health was created by the Ministry of Health Act, 1919, and by s. 3 (1) of that Act and an Order in Council made thereunder, which came into operation on 1st July 1919, all the powers and duties of the L. G. B. were transferred to the Ministry of Health. Many other powers and duties theretofore vested in or imposed on other Government departments were by the same Act and Orders in Council made thereunder transferred to the Minister. See the Act and the Orders in Council, *post*, p. 5159.

(b) See the additional powers transferred to the Board by the P. H. A., 1872, ss. 34—36, and preserved by the P. H. A., 1875, Sched. V., Part III., *post*, p. 4526. By the Wales and Berwick Act, 1746, 18 Halsbury's Statutes 969, England includes Wales.

3. [Constitution of Local Government Board] (a).

(a) These sections were repealed by s. 11 (2) and the Second Schedule to the Ministry of Health Act, 1919, *post*, p. 5196.

4. [President and one of the secretaries may sit in Parliament] (a).

(a) See note (a), to s. 3, *supra*.

Section 5. **5. [*Seal, style, and acts of Board*] (a).**

(a) See note (a) to s. 3, *ante*, p. 4319.

6. [*Distribution of business*] (a).

(a) See note (a) to s. 3, *ante*, p. 4319.

Construction
of Acts and
documents and
power of Local
Government
Board.

7. In the construction of and for the purposes of any Act of Parliament, contract, or other document passed, entered into, or made before the establishment of the Local Government Board, but so far only as may be necessary for exercising the powers and discharging the duties by this Act transferred to and imposed on the Local Government Board, the name of such Board shall, according to circumstances, be deemed to be substituted for the Poor Law Board, one of her Majesty's principal Secretaries of State (a), or her Majesty's most honourable Privy Council, as the case may require; and any act or thing which might, if this Act had not passed, have been done by the Poor Law Board, or by one of her Majesty's principal Secretaries of State, or by her Majesty's most honourable Privy Council, so far as relates to the powers and duties hereby transferred, may be done by the Local Government Board.

(a) See further, the P. H. A., 1872, s. 34, re-enacted in the P. H. A., 1875, Sched. V., Part III., *post*, p. 4526, whereby the consent of the L. G. B. was substituted for that of other departments in the cases there stated.

8. Duplicate returns to be sent to Local Government Board (a).

(a) This section was repealed by the L. G. A., 1933, and is replaced by *ibid.*, s. 247, *ante*, p. 1092.

SCHEDULE REFERRED TO IN THE FOREGOING ACT (a).

Sept. 2.

PART I.

Powers and Duties of Secretary of State.

Subject.	Act.
Registration of Births, Deaths, and Marriages .	6 & 7 Will. 4, c. 86. 7 Will. 4 & 1 Vict. c. 22.
Public Improvement	23 & 24 Vict. c. 30.
Towns Improvement	10 & 11 Vict. c. 34. And any Acts amending the said Acts, and conferring powers on the said Secre- tary of State.

(a) Several of the Acts originally contained in this Schedule are consolidated in different Acts, and have been entirely repealed and are, therefore, here omitted; the others are printed in this Appendix in so far as they concern local authorities.

PART II.

Powers and Duties of Privy Council.

Subject.	Act.
Vaccination	30 & 31 Vict. c. 84. And any Acts amending the said Acts, and conferring powers on the said Privy Council.

THE STEAM WHISTLES ACT, 1872.

Section 1.

(35 & 36 VICT. c. 61.)

An Act to Regulate the Use of Steam Whistles in certain Manufactories (a).

[6th August, 1872.]

1. The Act shall not apply to Scotland.

Extent.

(a) The short title to this Act is as enacted by the Short Titles Act, 1896 (18 Halsbury's statutes 1021). The clause of enactment to this Act was repealed by the S. L. R. (No. 2) A., 1893 (*op. cit.* 1014).

2. No person shall use or employ in any manufactory, or any other place, any steam whistle (a) or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues: Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person using the same: Provided also, that it shall be lawful for the Local Government Board (b), on representation made to them by any person that he is prejudicially affected (c) by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority.

Use of steam whistles and trumpets.

(a) L. formerly used a whistle directly connected with an engine boiler, but disconnected it, and used thereafter a gas engine to compress air and store it in a reservoir in his factory, and the same pipe connected therewith produced the same noise:—*Held*, that this was a "steam whistle," and required the consent of the sanitary authority pursuant to the above section (*Herbert v. Leigh Mills Co.* (1889), 53 J. P. 679; 5 T. L. R. 449; 24 Digest 905, 51).

(b) Now the M. of H. See Ministry of Health Act, 1919, *post*, p. 5191.

(c) Probably the sanitary authority would be guided by general and public considerations only in granting and revoking licences. The appeal to the M. of H. may, however, be of a personal character, and may be on the ground of annoyance, though this would doubtless have to be shown to be serious in order to succeed. The M. of H., it is believed, are guided by an opinion expressed by the Law Officers of the Crown as to the precise meaning to be attached to the words "prejudicially affected."

3. "Sanitary authority" means the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866 (a).

Definition.

29 & 30 Vict. c. 90.

(a) Now the P. H. A., 1936, *ante*, p. 4.

4. All offences and penalties under this Act may be prosecuted and recovered in England in manner directed by the Summary Jurisdiction (England) Acts . . .

Legal procedure.

11 & 12 Vict. c. 43, etc.

THE METALLIFEROUS MINES REGULATION ACT, 1872.

(35 & 36 VICT. c. 77.)

An Act to Consolidate and Amend the Law relating to Metalliferous Mines (a).

[10th August, 1872.]

* * * * *

13. Where any mine to which this Act applies (b) is abandoned or the working thereof discontinued, at whatever time such abandonment or discontinuance occurred (c), the owner thereof, and every other person interested in the minerals of the mine (d), shall cause the top of the shaft

Fencing of abandoned mine.

Section 13. and any side entrance from the surface to be and to be kept securely fenced for the prevention of accidents (e).

Provided that—

- (1) Subject to any contract to the contrary, the owner of the mine shall, as between him and any other person interested in the minerals of the mine, be liable to carry into effect this section, and to pay any costs incurred by any other person interested in the minerals of the mine in carrying this section into effect :
- (2) Where such abandonment or discontinuance has occurred in the case of a mine before the passing of this Act, this section shall apply only to such shaft or side entrance of the mine as is situate within fifty yards of any highway, road, footpath, or place of public resort, or in open or unenclosed land, or not being situate as aforesaid, is required by an inspector in writing to be fenced, on the ground that it is specially dangerous :
- (3) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

If any person fail to act in conformity with this section he shall be guilty of an offence against this Act (f).

Any shaft or side entrance which is not fenced as required by this section, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, or is required by an inspector as aforesaid to be fenced, shall be deemed to be a nuisance within the meaning of section eight of the Nuisances Removal Act for England, 1855, as amended and extended by the Sanitary Act, 1866 (g).

18 & 19 Vict.
c. 121.
29 & 30 Vict.
c. 90.

(a) The preamble and clause of enactment of this Act have been repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014).

The Coal Mines Regulation Act, 1872, referred to in the preamble, is now represented by the Coal Mines Act, 1911, which contains (see s. 26, *post*, p. 5121) a provision on the same point. See also the Quarry (Fencing) Act, 1887, *post*, p. 4696.

(b) By s. 3 (12 Halsbury's Statutes 20) (construed in accordance with s. 83 of the Coal Mines Regulation Act, 1887, and s. 38 (1) of the Interpretation Act, 1889 ; 18 Halsbury's Statutes 1005), this Act applies to every mine or whatever description other than a mine to which the Coal Mines Act, 1911, applies : as to which see s. 1 of that Act, *post*, p. 5120. By s. 39 (12 Halsbury's Statutes 38), if any question arises whether a mine is one to which this Act or that Act applies, such question shall be referred to a Secretary of State, whose decision thereon shall be final. See *Sims v. Evans* (1875), 40 J. P. 199 ; 23 W. R. 730 ; 34 Digest 604, 9.

(c) It applies to mines abandoned before this Act (*Stott v. Dickinson* (1876), 40 J. P. 613 ; 34 L. T. 291 ; 34 Digest 738, 1153). Notice must be given to the inspector of mines when a shaft is abandoned or working thereof discontinued (s. 12 ; 12 Halsbury's Statutes 23).

(d) By s. 41 (*op. cit.* 38), the term "owner," when used in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty rent or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mines. Where a mine was abandoned the owner, who had let it on lease for a term of years subject to a rent or royalties, was held to be a person interested in the minerals within this section, though the lease was still in force and undetermined (*Evans v. Mostyn* (1877), 2 C. P. D. 547 ; 41 J. P. 775 ; 34 Digest 747, 1215). Where a person had a lease of a mine from the Duchy of Cornwall on the terms that he was to pay as rent all he might receive in respect of the mine, and 5s. yearly in addition, it was held that he was not the owner nor interested within this section (*Arkwright v. Evans* (1880), 49 L. J. M. C. 82 ; 34 Digest 747, 1218). Where a lease had expired, the lessee was held not liable, though by his covenant he had agreed to fence abandoned shafts (*Stott v. Dickinson, supra*). Harbour trustees having a licence to take flints and chalk from a quarry at a certain price, were held not to be owners nor interested in the minerals so as to be obliged to fence it (*Foster v. Newhaven Harbour Trustees* (1897), 61 J. P. 629 ; 13 T. L. R. 292 ; 34 Digest 750, 1233). But a lord of the manor entitled to dues of lot, cope, and the third meer under the Derbyshire Mining Act, 1852, was held interested in the

minerals and bound to fence (*Devonshire (Duke) v. Stokes* (1897), 61 J. P. 406; 76 L. T. 424; 34 Digest 753, 1265). So also was the owner of the soil of an abandoned lead mine being owner of the calc-spar and calk (barytes) it contained (*Stokes v. Arkwright* (1897), 61 J. P. 775; 66 L. J. Q. B. 845; 34 Digest 747, 1216).

A local authority in whom is vested by statute a public well formed by an accumulation of water in the disused shaft of a mine, is not liable under this section to keep the shaft fenced for the prevention of accidents (*Knuckey v. Redruth R. D. C.*, [1904] 1 K. B. 382; 68 J. P. 172; 34 Digest 748, 1219).

(e) A wall round an enclosure ten acres in extent, in which there is a side entrance to a mine, is not a sufficient fence round the side entrance within the meaning of this section (*Foster v. Owen* (1893), 57 J. P. 87; 62 L. J. M. C. 7; 34 Digest 748, 1220).

(f) As to penalties, see s. 31 (12 Halsbury's Statutes 35). By s. 35 (*op. cit.* 37), "No prosecution shall be instituted against the owner or agent of a mine to which this Act applies for any offence under this Act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a Secretary of State." But where the inspector has determined on a prosecution, the information may be laid in his name by an agent employed by him (*Foster v. Fyfe*, [1896] 2 Q. B. 104; 60 J. P. 423; 34 Digest 748, 1224).

(g) See now the P. H. A., 1936, Pt. III., *ante*, pp. 293 *et seq.*, and cf. notes to Quarry (Fencing) Act, 1887, *post*, p. 4696.

* * * * *

THE PAWNBROKERS ACT, 1872.

(35 & 36 VICT. c. 93) (a).

An Act for consolidating, with amendments, the Acts relating to Pawnbrokers in Great Britain. [10th August, 1872.]

PRELIMINARY.

1. This Act may be cited as "The Pawnbrokers Act, 1872."

Short title.

(a) This Act has been amended by the Pawnbrokers Act, 1922 (12 Halsbury's Statutes 711), which refers only to those provisions omitted as outside the scope of the present work. The amending Act has therefore not been included in this volume. The duties of justices with reference to pawnbrokers' certificates under this Act are now transferred to district councils by the L. G. A., 1894, ss. 27, 32, *post*, pp. 4911-2.

* * * * *

3. The Schedules to this Act, including the notes thereto, shall have effect as part of this Act (a).

Effect of Schedules.

(a) The earlier part of this section was repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014).

* * * * *

DEFINITIONS; APPLICATION OF ACT.

5. In this Act—

"Pawnbroker" includes every person who carries on the business of taking goods and chattels in pawn: Interpretation.

"Pledge" means an article pawned with a pawnbroker:

"Pawner" means a person delivering an article for pawn to a pawnbroker:

"Shop" includes dwelling-house and warehouse, or other place of business, or place where business is transacted:

"Unfinished goods or materials" includes any goods of any manufacture or of any part or branch of any manufacture either mixed or separate, or any materials whatever plainly intended for the composing or manu-

Section 5.

facturing of any goods, after such goods or materials are put into a state or course of manufacture, or into a state for any process or operation to be performed thereupon or therewith, and before the same are completed or finished for the purpose of wear or consumption :

"Constable" includes any peace officer :

"Justice" means justice of the peace having jurisdiction in the county or place where the matter requiring the cognizance of a justice arises.

Extension of
Act to keepers
of certain shops.

6. In order to prevent evasion of the provisions of this Act, the following persons shall be deemed to be persons carrying on the business of taking goods and chattels in pawn (that is to say), every person who keeps a shop for the purchase or sale of goods or chattels, or for taking in goods or chattels by way of security for money advanced thereon, and who purchases or receives or takes in goods or chattels, and pays or advances or lends thereon any sum of money not exceeding ten pounds with or under an agreement or understanding expressed or implied or to be from the nature and character of the dealing reasonably inferred, that those goods or chattels may be afterwards redeemed or repurchased on any terms ; and every such transaction, article, payment, advance, and loan shall be deemed a pawning, pledge, and loan respectively within this Act.

* * * * *

INLAND REVENUE LICENCES.

Yearly licence
and excise duty.

37. Every pawnbroker shall yearly take out from the Commissioners of Inland Revenue an excise licence for carrying on his business, on which licence there shall be charged and paid for the use of her Majesty (a), an excise duty of seven pounds ten shillings.

Every licence shall be dated on the day on which it was issued and shall determine on the thirty-first day of July.

A separate licence shall be taken out and paid for by a pawnbroker for each pawnbroker's shop kept by him.

If a person acts as a pawnbroker without having in force a proper licence he shall for every such offence be liable to an excise penalty not exceeding fifty pounds.

All the provisions contained in any Act relating to excise licences, duties or penalties, and in force at the commencement of this Act, shall, as far as the same are applicable, have full effect with respect to the licence and duty and penalty aforesaid.

(a) Certain words are here repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

* * * * *

Licences not to
be granted with
out certificate.

39. (a) A pawnbroker's licence shall not be granted to any person except on the production and in pursuance of the authority of a certificate granted under this Act ; save that it shall not be necessary for any person being at the commencement of this Act a licensed pawnbroker, or for his executors, administrators, assigns, or successors, to obtain such a certificate (b).

Any licence granted in contravention of this section shall be void.

(a) Certain words are here repealed by the S. L. R. A., 1898.

(b) This exemption is not confined to the business actually carried on by a pawnbroker at the commencement of the Act. It extends to all pawnbrokers then licensed, their executors, assigns, or successors, who may open a new business on payment of the licence duty without any certificate (*R. v. Inland Revenue Commissioners, Ohlson's Case, Garland's*

Case, [1891] 1 Q. B. 485; 55 J. P. 117; 37 Digest 22, 175). But the exemption only enables a successor to carry on without obtaining a certificate the actual business to which he succeeds, and does not enable him to open or carry on a new business merely upon payment of the licence duty (*R. v. Inland Revenue Commissioners, Ex parte Silvester*, [1907] 1 K. B. 108; 71 J. P. 36; 37 Digest 22, 176).

**Note to
Section 39.**

40. Certificates under this Act shall be granted (as regards England) in the metropolitan police district by a magistrate sitting in any police court in the metropolis having jurisdiction in the district where the application is made, and in any place within the jurisdiction of a stipendiary magistrate by that magistrate, and in other places by the justices of the petty sessional division assembled at petty sessions specially convened for that purpose (a).

Certificates to be granted by justices.

(a) Certificates are now granted by district councils; see note (a) to s. 1, *ante*, p. 4323.

41. A certificate under this Act shall be in the form given in the Sixth Schedule to this Act, or to the like effect, and shall be in force for one year from this date.

Form and duration of certificate.

42. A person intending to apply for the first time for a certificate under this Act shall proceed as follows:

Notice of first application.

- (1) Twenty-one days at least before the application he shall give notice by registered letter sent by post of his intention to one of the overseers (a) of the poor of the parish or place in which he intends to carry on business, and to the superintendent of police of the district, and shall in the notice set forth his name and address:
- (2) Within twenty-eight days before the application he shall cause a like notice to be affixed and maintained between ten o'clock in the morning and five o'clock in the afternoon of two consecutive Sundays, on the principal door or one of the doors of the church or chapel of the parish or place, or if there is none, then on some other public and conspicuous place in the parish or place.

(a) Overseers having been abolished by s. 62 of the R. & V. Act, 1925, *ante*, p. 2222, this notice should now be given to the clerk to rating authority in an urban district, and in a rural district to the chairman of the appropriate parish council or parish meeting (Art. 14, Overseers Order, 1927, *ante*, p. 3600).

43. An application for a certificate shall not be refused, except on the following grounds, or one of them:

Grounds of refusal of certificate.

- (1) That the applicant has failed to produce satisfactory evidence of good character;
- (2) That the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character;
- (3) That he has not complied with the last preceding section.

44. If any person forges a certificate, or tenders a certificate knowing it to be forged, he shall, on conviction thereof in a court of summary jurisdiction, be liable to a penalty not exceeding twenty pounds, or, in the discretion of the court, to imprisonment for any term not exceeding six months, with or without hard labour.

Forgery of certificate.

A licence granted in pursuance of a forged certificate shall be void; and if any person makes use of a forged certificate, knowing it to be forged, he shall be disqualified from obtaining at any time thereafter a pawnbroker's licence.

* * * * *

Section 52. 52. If any person thinks himself aggrieved by any conviction or order of a court of summary jurisdiction under this Act, or by the refusal of a certificate for a licence, he may appeal therefrom, subject to the conditions and regulations following :

Appeal to
quarter
sessions.

- (1) The appeal shall be made to some court of general or quarter sessions (a) for the county or place in which the cause of appeal has arisen, held not less than fifteen days and (unless adjourned by the court) not more than four months after the decision or refusal appealed from :
- (2) The appellant shall within seven days after the cause of appeal has arisen give notice to the other party and to the court or authority appealed from of his intention to appeal and the ground thereof :
- (3) The appellant shall immediately after such notice enter into a recognizance before a justice with two sufficient sureties conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice allows :
- (4) . . .
- (5) The court of appeal may adjourn the appeal ; and, upon the hearing thereof, they may confirm, reverse, or modify the decision or refusal appealed from, or remit the matter with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and may make such order as to costs to be paid by either party as the court thinks just.

(a) The remainder of this section, though repealed by the S. J. A., 1884 (11 Halsbury's Statutes 355), so far as it related to appeals from convictions or orders of a court of summary jurisdiction, remains in full force as regards appeals from the refusal of a certificate for a licence. Paragraph (4) relating to release out of custody is, however, inapplicable and therefore omitted.

* * * * *

SAVING.

Saving for local
Acts.

57. Nothing in this Act shall repeal or in any manner interfere with the operation of any local or local and personal Act for the time being in force in any city, town, burgh, or other place.

* * * * *

[Sect. 41.]

THE SIXTH SCHEDULE (a).

FORMS OF CERTIFICATES OF MAGISTRATES AND JUSTICES.

I.—England.

I [or We] [here insert description of the magistrate or justices] do hereby certify that I [or we] do authorise the grant to A. B. of in the county of of a licence to carry on the business of a pawnbroker within the township of [or parish of or other place as the case may be].

Witness my hand [or our hands] this day of , 18 .

(a) See ss. 40, 41, and the note thereto, *ante*, p. 4325.

* * * * *

THE FAIRS ACT, 1873.

Section 1.

(36 & 37 VICT. C. 37) (a).

An Act to amend the Law relating to Fairs in England and Wales.

[7th July, 1873.]

1. This Act may be cited as "The Fairs Act, 1873."

Short title.

(a) The powers and duties of justices under this Act are transferred to district councils by the L. G. A., 1894, ss. 27, 32, *post*, pp. 4911-2. The sections and parts of sections repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014), have been here omitted. See also Fairs Act, 1871, *ante*, p. 4307.

2. This Act shall not extend to Scotland or Ireland.

Extent.

3. In this Act the term "owner" means any person or persons or body of commissioners or body corporate, entitled to hold any fair, whether in respect of the ownership of any lands or tenements, or under any charter, letters patent, or otherwise howsoever.

Definition of terms.

4. [*Commencement of Act (repealed by the Statute Law Revision (No. 2) Act, 1893).*]5. [*The Fairs Act, 1868, repealed*] (a).

(a) This section is in turn itself repealed by the S. L. R. A., 1883 (18 Halsbury's Statutes 986).

6. In case it shall appear to a Secretary of State, upon representation duly made to him by the justices (a) acting in and for the petty sessional division within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be held in each year on some day or days other than that or those on which such fair is used to be held or on the day or days on which such fair is used to be held and any preceding or subsequent day or days or on or during a less number of days than those on which such fair is used to be held, it shall be lawful for a Secretary of State to order that such fair shall be held on such other day or days, or on the same day or days and any preceding or subsequent day or days, or on or during any less number of days as he shall think fit: Provided always, that notice of such representation and of the time when it shall please a Secretary of State to take the same into consideration shall if such representation shall have been made by justices (a) be given to the owner of such fair, and shall if such representation shall have been made by the owner of such fair be given to the clerk to the justices (a) acting in and for the petty sessional division within which such fair is held, and shall also be published once in the London Gazette, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, before such representation is so considered.

Power to Secretary of State to alter days of holding fairs.

(a) See note (a) to s. 1, *supra*.

7. When and so soon as any such order as aforesaid shall have been made by a Secretary of State, notice of the making of the same shall be published in the London Gazette and in some one newspaper of the county, city, or borough in which such fair is usually held, or if there be no newspaper published therein, then in the newspaper of some county adjoining or near thereto, and thereupon such fair shall only be held on the day or days mentioned in

Order of Secretary of State to be published in certain newspapers.

Section 7.

— — —
All rights, etc.
of owner to
remain good.

such order ; and it shall be lawful for the owner of such fair to take all such toll or tolls, and to do all such act or acts, and to enjoy all and the same rights, powers, and privileges in respect thereof, and enforce the same by all and the like remedies, as if the same were held on the day or days upon which it was used to be held previous to the making of such order.

THE GAS AND WATER WORKS FACILITIES ACT, 1870,
AMENDMENT ACT, 1873.

(36 & 37 VICT. c. 89) (a).

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870. [5th August, 1873.]

Short title.

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873" (b).

(a) See the Gas and Water Works Facilities Act, 1870, *ante*, p. 4264. The clause of enactment of this Act has been repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014).

(b) Sections 2—11 and the Schedule to this Act were repealed by the S. L. R. A., 1883 (*op. cit.* 936).

* * * * *

Power of Board
of Trade to
revoke, amend,
extend, or vary
Provisional
Order.

33 & 34 Vict.
c. 70

12. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade (a) have made any Provisional Order, they may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order.

(a) The L. G. B. were substituted for the Board of Trade so far as regards Provisional Orders for the supply of gas by an urban authority. See s. 161 of the P. H. A., 1875 (13 Halsbury's Statutes 692). However, by Order in Council of November 9th, 1920, the powers and duties of the Minister of Health (who had succeeded to the powers and duties of the L. G. B.) in relation to gas undertakings were once more vested in the Board of Trade. See also the provisions of the Gas Regulation Act, 1920, and the Gas Undertakings Act, 1929, Vol. V., *post*. Special Orders may now be made instead of Provisional Orders.

Inquiries by the
Board of Trade
for purposes of
33 & 34 Vict.
c. 70, and this
Act.

13. Where, in relation to any application for a Provisional Order under the Gas and Water Works Facilities Act, 1870, or under this Act, it is in the opinion of the Board of Trade (a) expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following :

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade, hereinafter called the commissioner or commissioners :
2. Ten days notice at the least shall be given by the commissioner or commissioners of the time and place at which the inquiry is to be commenced :
3. The inquiry shall be commenced at the time and place so appointed, and the commissioner or commissioners may adjourn the inquiry from

time to time as may be necessary to such time and place as he or they may think fit : Section 13.

4. The commissioner or commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him or them, and every person summoned shall attend the commissioner or commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the commissioner or one of the commissioners for the purposes of the said inquiry shall, on summary conviction before two justices . . . be liable to a penalty not exceeding five pounds : Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode :
5. The commissioner or commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry (b).

(a) See note (a) to s. 12, *supra*.

(b) This is an unusual provision, as reports made to a Government Department by officers appointed to investigate applications are usually treated as confidential documents, cf. *L. G. B. v. Arlidge*, [1915] A. C. 120 ; 79 J. P. 97 ; 38 Digest 217, 518.

14. The Board of Trade (a) may from time to time make, and, when made may rescind, annul, or add to, rules with respect to the following matters (b) : Rules for carrying Acts into effect.

The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act ; and 33 & 34 Vict. c. 70.

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

(a) See note (a) to s. 12, *ante*, p. 4328.

(b) See the Rules of the Board of Trade, dated March 1st, 1922, as to special orders relating to gas under the Gas Regulation Act, 1920, Vol. V., *post*, which have superseded provisional orders under this Act ; the rules of October 1st, 1926, issued by the Board of Trade and Minister of Health as to gas and water (combined purposes) ; and rules of October 1st, 1926, by the Minister of Health as to Water Orders. These Rules are set out *ante*, p. 2841.

15. This Act shall not apply to any place within the metropolis as the same is defined in the Metropolis Management Act, 1855. Act not to extend to Metropolis.

* * * * *

18 & 19 Vict.
c. 120.

THE EXPLOSIVES ACT, 1875.

THE EXPLOSIVES ACT, 1875.

(38 & 39 VICT. c. 17.)

An Act to amend the Law with respect to manufacturing, keeping, selling, carrying, and importing Gunpowder, Nitro-glycerine, and other Explosive Substances.
[14th June 1875.]

Short title. 1. This Act may be cited as "The Explosives Act, 1875."

* * * * *

Byelaws as to conveyance by road or otherwise, or loading of gunpowder.

37. The Secretary of State may from time to time make, and when made rescind, alter, or add to byelaws (a) for regulating the conveyance, loading and unloading of gunpowder in any case in which byelaws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters; that is to say,

1. Regulating the description and construction of carriages to be used in the conveyance of gunpowder as merchandise; and

2. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger carriages; and

3. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage; and

4. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading, and unloading; and

5. Providing for the publication and supply of copies of the byelaws; and

6. Generally for protecting, whether by means similar to those above-mentioned or not, persons or property from danger; and

7. Adapting on good cause being shown the byelaws in force under this section to the circumstances of any particular locality.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such byelaws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage in respect of which, the breach of byelaw has taken place.

For the purpose of any mode of conveyance which is not a conveyance by land this section shall be construed as if ship and boat were included in the term "carriage."

(a) See the byelaws as to the deposit of explosives for conveyance as refuse made under this section, and contained in an Order dated September 20th, 1924, *ante*, p. 2801.

* * * * *

39. Subject to the provisions hereafter in this Part of this Act contained, Part I. of this Act relating to gunpowder shall apply to every other description of explosive, in like manner as if those provisions were herein re-enacted with the substitution of that description of explosive for gunpowder.

THE PUBLIC HEALTH ACT, 1875.

(38 & 39 VICT. c. 55.)

An Act for consolidating and amending the Acts relating to Public Health in England. [11th August 1875.]

This Act has now very largely been repealed and its former provisions consolidated into other enactments. In so far as the Act survives, it falls into two parts, ss. 1—3, 26, 68—9, 144—155, 157, 160—5, 171—2, 228, 297—8, 303—4, 343, and parts of Scheds. IV. and V., which remain unrepealed, and the balance of the sections printed which were repealed by the P. H. A., 1936, Sched. III., Pt. I., except so far as material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith.

PART I.

Preliminary.

1. This act may be cited as “The Public Health Act, 1875.” Short title.
2. This Act shall not extend to Scotland or Ireland, nor (save as by Extent of
this Act is expressly provided) to the metropolis. Act.

Under the London Government Act, 1899, s. 19 (11 Halsbury's Statutes 1236), Woolwich is now part of the metropolis for all purposes, and the provisions of this Act which were made applicable to it by the P. H. (London) A., 1891, s. 102, no longer apply to it. See also note to definition of “metropolis” on *post*, p. 4332.

As to the Scilly Islands, see s. 292 of the L. G. A., 1933, and note thereto, *ante*, p. 1175.

3. This Act is divided into parts, as follows :

Part I.—Preliminary.
 Part II.—Authorities for Execution of Act.
 Part III.—Sanitary Provisions.
 Part IV.—Local Government Provisions.
 Part V.—General Provisions.
 Part VI.—Rating and Borrowing Powers, etc.
 Part VII.—Legal Proceedings.
 Part VIII.—Alteration of Areas and Union of Districts.
 Part IX.—Local Government Board.
 Part X.—Miscellaneous and Temporary Provisions.
 Part XI.—Saving Clauses and Repeal of Acts.

*Division of
Act into
parts.*

Substantially only Part IV. of the Act and consequential provisions remain.

4. In this Act, if not inconsistent with the context, the following Definitions.
words and expressions have the meanings hereinafter respectively
assigned to them ; that is to say,

As to the effect of interpretation clauses, see *ante*, p. 686.

This section has been repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as it is material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith.

“Borough” means any place for the time being subject to the Act of “Borough.”
 the session of the fifth and sixth years of the reign of King William

Section 4.

the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any act amending the same :

These Acts have all been repealed and were for the most part re-enacted by a consolidating and amending statute, the Municipal Corporations Act, 1882, which applies (s. 6 ; *post*, p. 4625) to every city and town to which the Municipal Corporations Act, 1835, applied at the commencement of the Act, (i.e., January 1st, 1883), and to any town, district, or place, whereof the inhabitants are incorporated after the commencement of the Act, and whereto the provisions of the Municipal Corporations Acts are under the Act extended by charter, but to no other place. The M. C. Act, 1882, has itself now been largely replaced by the L. G. A., 1933, *ante*, p. 735. For a similar definition, see the Interpretation Act, 1889, s. 15 (18 Halsbury's Statutes 998).

"The Metropolis."

"The metropolis" means the city of London and all parishes and places mentioned in Schedules A., B., and C., to the Metropolis Management Act, 1855 :

For a list of the parishes and places mentioned in such Schedules, see Woolrych's Metropolis Management Acts, 3rd ed., p. 149. By the express mention of the city of London, the definition of the metropolis contained in the previous Act is rendered more exact. Since the L. G. A., 1888, *post*, p. 4722, however, the term "metropolis" has given place to "County of London," and various changes of boundaries have taken place. Note that it does not extend to the *Metropolitan Police District*, as to the limits of which see Metropolitan Police Act, 1829 (12 Halsbury's Statutes 743) ; Metropolitan Police Act, 1839 (*op. cit.* 767), and amending Acts collected in 9 Chitty's Statutes, "Police (Metropolis)," p. 108, nor to the *London Traffic Area*, as to the limits of which see London Traffic Act, 1924, Vol. V., *post*. Both these areas are of much greater extent.

Woolwich is now part of the metropolis. See the note to s. 2, *ante*, p. 4331.

"Local government district";
"local board."

"Local government district" means any area subject to the jurisdiction of a local board constituted in pursuance of the Local Government Acts before the passing of this Act, or in pursuance of this Act, and "local board" means any board so constituted :

The "Local Government Acts" were (see Schedule V., Part I., *post*, p. 4525) the Public Health Act, 1848 ; the Local Government Act, 1858 ; the Local Government Act (1858) Amendment Act, 1861 ; and the Local Government Act Amendment Act, 1863. Local Boards constituted under the Act of 1848 were called "Local Boards of Health."

As to the constitution of local government districts in pursuance of this Act (a process which has ceased), see ss. 271, 272 (13 Halsbury's Statutes 738, 739), now repealed.

This definition is retained, as the expression is used in this Act ; but by the L. G. A., 1894, s. 21 (1), *post*, p. 4332, the districts of urban sanitary authorities are now called urban districts, and local boards urban district councils.

"Improvement Act district."

"Improvement Act district" means any area for the time being subject to the jurisdiction of any Improvement Commissioners as hereinafter defined :

"Improvement Commissioners,"

"Improvement Commissioners" means any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating :

This definition was taken from the P. H. A., 1872, s. 60, but the term "town government" occurred in Local Government Act, 1858 (Amendment) Act, 1861. Improvement Commissioners have in many cases been replaced by Town Councils as

a result of the incorporation of their areas under the M. C. Acts. In other cases they have become Urban District Councils and their districts Urban Districts. The special powers given by the Improvement Acts may survive in substance. See the L. G. A., 1894, s. 11 (1) (10 Halsbury's Statutes 784).

"Parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :

This definition was adopted from the Poor Law Amendment Act, 1866, s. 18 (14 Halsbury's Statutes 544). Overseers could formerly be appointed for places or districts distinct from parishes. By the Interpretation Act, 1889, s. 5 (18 Halsbury's Statutes 993), in every Act passed after the year 1866 the expression "parish" meant, unless the contrary intention appeared, as respects England and Wales, a place for which a separate poor rate was or could be made, or for which an overseer was or could be appointed. Such definition superseded that in the text, but was practically identical. But now, in consequence of the abolition of overseers and of parochial rating by the R. and V. Act, 1925, *ante*, p. 2113, another definition became necessary and it is provided by *ibid.*, s. 68 (4), *ante*, p. 2232, that "In this and every other Act whether passed before or after this Act, the expression 'parish' shall, unless the contrary intention appears and subject to any alteration of area made on or after the appointed day (*i.e.*, 1st April, 1927) by or in pursuance of any Act, mean a place for which immediately before the appointed day a separate poor rate was or could be made or a separate overseer was or could be appointed." The definition in the Interpretation Act, 1889 (18 Halsbury's Statutes 992), was accordingly repealed by s. 69 and Sched. VIII. of the R. and V. Act, 1925, *ante*, pp. 2233, 2264, as from the appointed day, *i.e.*, 1st April, 1927 (R. and V. Act (Repeals) Order, 1927).

Extra-parochial places have now practically disappeared, for by the Extra-Parochial Places Act, 1857, s. 1 (12 Halsbury's Statutes 936), every place entered separately in the report of the Registrar-General on the last census which then was or was reputed to be extra-parochial, and wherein no rate was levied for the relief of the poor, was in future for all purposes of the assessment to the poor rate to be deemed a parish ; and the justices having jurisdiction in such place were to appoint overseers therein. And by the Poor Law Amendment Act, 1868, s. 27 (10 Halsbury's Statutes 558), every place which was or was reputed to be extra-parochial, whether entered in the Registrar-General's report or not, for which no overseer had been appointed, or was then acting, or which had not then been annexed to and incorporated with an adjoining parish under s. 4 of the Act of 1857 (12 Halsbury's Statutes 937), was for all civil parochial purposes to be annexed to and incorporated with the next adjoining parish with which it had the largest common boundary, and in case there should be two or more parishes with which it had boundaries of equal extent, then with that parish which contained the lowest amount of rateable value. Finally, by s. 1 (1) of the L. G. A., 1933, *ante*, p. 736, the whole of England and Wales were subdivided eventually into parishes, which seems to exclude the possibility of such a thing as an extra-parochial place. But otherwise portions of Windsor Castle, Exeter Castle Yard, Lundy Island and certain other islands and lighthouses are still extra-parochial.

"Union" means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :

"Guardians" means any persons or body of persons by whom the relief of the poor is administered in any union :

Under the L. G. A., 1929, Vol. V., and 10 Halsbury's Statutes 883, "Unions" and "Guardians" have now ceased to exist.

The word "union" must now be construed as referring to "a county or county borough" and "guardians" as "the council of a county or county borough" (Sched. X., r. 1, *ibid.*, Vol. V., and 10 Halsbury's Statutes 995).

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"Person."

"Person" includes any body of persons, whether corporate or unincorporate :

In the P. H. A., 1848, s. 2, this word was applied to corporations aggregate or sole. It is presumed that the latter are included here.

In *Pharmaceutical Society v. London and Provincial Supply Association, Ltd.* (1880), 5 App. Cas. 857; 45 J. P. 20; 13 Digest 351, 891, Lord SELBORNE, at p. 861, said: "There can be no question that the word 'person' may, and I should be disposed myself to say *primâ facie* does, in a public statute, include a person in law: that is, a corporation, as well as a natural person. But although that is a sense which the word will bear in law, and which, as I said, perhaps ought to be attributed to it in the construction of a statute unless there should be any reason for a contrary construction, it is never to be forgotten that in its popular sense and ordinary use it does not extend so far. Statutes, like other documents, are constantly conceived according to the popular use of language; and it is certain that this word is often used in statutes in a sense in which it cannot be intended to extend to a corporation. That accounts for the frequent occurrence in some statutes, in interpretation clauses, of an express declaration that it shall extend to a body politic or corporate."

By the Interpretation Act, 1889, s. 2 (1) (18 Halsbury's Statutes 992) (re-enacting Criminal Law Act, 1827, s. 14): "In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression 'person' shall, unless the contrary intention appears, include a body corporate." And by *ibid.*, s. 19 (*op. cit.* 1001): "In this Act and in every Act passed after the commencement of this Act the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

In the following cases the word has been held to include a corporation: *Pearks, Gunston and Tee, Ltd. v. Ward*, [1902] 2 K. B. 1; 66 J. P. 774; 25 Digest 81, 101; *In re Thompson's Trusts*, [1905] 1 Ch. 229; *R. v. Antrim JJ.*, [1906] 2 I. R. 298; *Hirst v. West Riding Union Banking Co.*, [1901] 2 K. B. 560; 26 Digest 33, 202; *Chuter v. Freeth and Pocock, Ltd.*, [1911] 2 K. B. 832; 75 J. P. 430; 13 Digest 352, 899; *R. v. Ascanio Puck & Co., Ltd.* (1912), 76 J. P. 487; 29 T. L. R. 11; 25 Digest 114, 377; and *cf. R. v. Gainsford JJ.* (1913), 29 T. L. R. 359; 13 Digest 353, 912 ("occupier"); *Evans v. London C. C.*, [1914] 3 K. B. 315; 78 J. P. 345; 13 Digest 352, 903 ("occupier"); in the following it was held not to do so: *Pharmaceutical Society's Case*, *supra*; *Wills v. Tozer* (1904), 53 W. R. 74; 13 Digest 351, 892; *Walker v. Richardson* (1837), 2 M. & W. 882; *O'Duffy v. Jaffe*, [1904] 2 I. R. 27; *Myllam v. Market Harborough Advertiser Co., Ltd.*, [1905] 1 K. B. 708; *Hawke v. E. Hulton & Co., Ltd.*, [1909] 2 K. B. 93; 73 J. P. 295; *R. v. Daily Mirror Newspapers, Ltd.*, [1922] 2 K. B. 530; 86 J. P. 151; 13 Digest 410, 1304.

As to the procedure on a charge of an offence against a corporation, see s. 33, Criminal Justice Act, 1925 (11 Halsbury's Statutes 415).

As to when the word does or does not include an infant, a woman, or a married woman, see cases collected in *In re Royal Naval School*, [1910] 1 Ch. 806; 28 Digest 147, 80, and *Bebb v. Law Society*, [1914] 1 Ch. 286; 42 Digest 22, 6.

As to the meaning of "person" in a lease, see *Willmott v. London Road Car Co.*, [1910] 2 Ch. 525; 13 Digest 353, 911.

"Local authority."

"Local authority" means urban sanitary authority and rural sanitary authority :

See L. G. A., 1933, s. 1 and notes, *ante*, pp. 736-8.

"Surveyor."

"Surveyor" includes (a) any person appointed by a rural authority to perform any of the duties of surveyor under this Act (b) :

(a) As to the difference between the words "mean" and "include," see *ante*, p. 687.

(b) This word is probably thus defined with reference to a rural sanitary authority because such an authority were not required by the Act to appoint a surveyor and

might do so temporarily for a special purpose. See L. G. A., 1933, s. 107, *ante*, p. 884, as to the duty of a district council to appoint officers and servants.

**Note to
Section 4.**

“Lands” and “Premises” include messuages buildings lands easements and hereditaments of any tenure: “Lands”; “premises.”

The definition of *premises* avoids difficulties in the interpretation of the word such as arose with reference to s. 3 of the Factory Acts Extension Act, 1867, in *Kent v Astley* (1869), L. R. 5 Q. B. 19; 34 J. P. 374; 24 Digest 899, 12, and *Redgrave v. Lee* (1874), L. R. 9 Q. B. 363; 38 J. P. 676; 24 Digest 899, 13. As the context may in any particular case require a departure from the definition, reference may be made to cases in which the meaning of the word in a local Act was discussed (*Metropolitan Water Board v. Paine*, [1907] 1 K. B. 285; 71 J. P. 63; 43 Digest 1086, 198; *Metropolitan Water Board v. Johnson*, [1913] 3 K. B. 900; 77 J. P. 384; 43 Digest 1086, 199).

“Owner” means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent: “Owner.”

The word *means* appears to be restrictive, and to imply that what follows is to be the only interpretation of the word *owner*, so that an owner in fee who has let land on a nominal ground rent is not within the definition. See note (a) on p. 7, *ante*, and cases, *infra*. “Means.”

This definition applies in construing the provisions of the Town Police Clauses Act, 1847, *ante*, p. 4222, as to fires, incorporated by s. 171, *post*, p. 4458. See *Sale v. Phillips*, [1894] 1 Q. B. 349; 58 J. P. 460; 38 Digest 227, 581.

See notes to the same phrase in s. 343 (1) of the P. H. A., 1936, *ante*, p. 702.

“Rack-rent” means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises (a); and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (b): “Rack-rent”; “full net annual value.”

(a) See the Poor Law Amendment Act, 1834, s. 109 (12 Halsbury's Statutes 923).

(b) This definition was taken from the Parochial Assessments Act, 1836, s. 1, and is what was set out in the column of the rate in the schedule headed *rateable value*. That Act was repealed by the R. and V. A., 1925, *ante*, p. 2113, but the definition in the text is not affected by the Act of 1925, and accordingly decisions upon the provisions of the law now repealed are necessary to a consideration of the definition in the text. As to the meaning of the words “free from all usual tenant's rates and taxes,” etc., see *Hackett v. Long Bennington Overseers* (1864), 16 C. B. (N. S.) 38; 28 J. P. 135; 38 Digest 529, 749; *R. v. Hall Dare* (1864), 5 B. & S. 785; 28 J. P. 791; 38 Digest 526, 737. In the latter, *Steele, J.*, explained the words “free from,” as being equivalent to “without regard to,” or “putting aside.”

“Tenant's rates and taxes” means those which are borne by the occupier as distinguished from the owner of land, but not land tax or property tax, which are landlord's rates or taxes. For a full discussion upon these subjects the reader is referred to a text-book upon the law of rating.

The following cases bearing upon this subject might also be referred to: *Waddle v. Sunderland Union*, [1908] 1 K. B. 642; 72 J. P. 99; 38 Digest 565, 1031;

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Green v. Newport Union, *Stead v. Newport Union*, [1909] A. C. 35; 73 J. P. 17; 38 Digest 527, 739; *White Brothers v. South Stoneham Union*, [1915] 1 K. B. 103; 79 J. P. 79; 38 Digest 529, 753; *Re Sawyer and Withall*, [1919] 2 Ch. 333; 35 T. L. R. 661; *Port of London Authority v. Orsett Union*, [1920] A. C. 273; 84 J. P. 69; 38 Digest 563, 1017.

As to evidence that a rent paid is a "rack-rent," see *Wareham and Dale, Limited v. Fyffe*, p. 703, *ante*.

"Street."

"Street" (a) includes any highway [*not being a turnpike road*] (b), and any public bridge (not being a county bridge) (c), and any road lane footway square court alley or passage whether a thoroughfare or not (d):

(a) See as to the word "include," p. 687, note (a), *ante*.

As to the variation of meaning of the word "street" in different sections, see *ante*, p. 713. Even in London it is not confined to public highways (*Barnes v. Cadogan Developments, Ltd.*, [1930] 1 Ch. 479; 142 L. T. 626; Digest Supp.).

in s. 26:

In s. 26, *post*, p. 4346, the word *street* is used to mean the roadway as distinguished from the roadway with the houses, and it is probably used in the sense assigned to it by the above definition.

in s. 149:

It has been expressly decided that *street* in s. 149, *post*, p. 4375, includes a country lane of which the herbage may be let. It is, therefore, used in its extended sense as here defined (*Coverdale v. Charlton* (1878), 3 Q. B. D. 376; on appeal, 4 Q. B. D. 104; 43 J. P. 268; 26 Digest 329, 616). And see to the same effect, *Nutter v. Accrington L. B. of Health* (1878), 4 Q. B. D. 375; 43 J. P. 635; 26 Digest 335, 660, decided on the corresponding section of Public Health Act, 1848. In *Stillwell v. New Windsor Corporation*, [1932] 2 Ch. 155; Digest Supp., it was held that trees planted on a public highway after dedication formed part of a "street" and were vested in the highway authority under this Act. In *Robinson v. Barton-Eccles L. B.*, *ante*, p. 713, Lord SELBORNE said: "In s. 149 of this Act, and the sections which follow it, the word *street* manifestly has the same sense as when we speak of a man going out of his house into the street, or carriages passing along the street. There the public highway, whether footway or carriage-way, is alone intended, and the houses on either side are certainly not included in that case in the street. And I should be inclined myself to say that this would *prima facie* be the sense of the word *street* when it is used in a context which contains no indication of anything more."

in s. 150

S. 150, *post*, p. 4388, is the complement of s. 149, and it would seem that the word "street" as therein used has the same meaning. That the word means the roadway as distinguished from the road with the houses is clear, and the dictum of Lord SELBORNE, already quoted, applies to s. 150 as well as to s. 149. The cases have not consistently decided whether the word is used in its natural and ordinary sense of a roadway with houses on both sides, or in the wider meaning assigned to it by the definition. *Maude v. Baildon L. B.* (1883), 10 Q. B. D. 394; 47 J. P. 644; 26 Digest 269, 93, apparently decided that the word "street" is used in s. 150 in its natural sense as distinguished from its extended meaning. But in *Portsmouth Corporation v. Smith* (1883), 13 Q. B. D. 184; 48 J. P. 404; 26 Digest 274, 123, the Master of the Rolls questioned that decision, pointing out that it had proceeded upon a mistaken view in *R. v. Dayman*, *post*, p. 4338. And the court decided that the word "street" as used in s. 53 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 547) (which corresponds to s. 150 of this Act), had to be interpreted according to the definition, and, therefore, included a highway which was not a street in the ordinary sense. And in the case of *Midland Rail. Co. v. Waton* (1886), 17 Q. B. D. 30; 59 J. P. 405; 26 Digest 267, 72, the court assumed that in s. 150 the word "street" was used as here defined. But all doubt on the subject is now removed by the decision of the Court of Appeal in *Jowett v. Idle L. B.* (1888), 57 L. T. 928; 36 W. R. 138; on appeal, 36 W. R. 530; 4 T. L. R. 442, C. A.; 26 Digest 270, 101; followed in *Richards v. Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48; 26 Digest 271, 102; *Fenwick v. Croydon R. S. A.*, [1891] 2 Q. B. 216; 55 J. P. 470; 26 Digest 271, 103; and *Walhamston U. D. C. v. Sandell* (1904), 68 J. P. 509; 2 L. G. R. 835; 26 Digest

271, 105. These cases decide that the word "street," as used in s. 150, means a street as above defined, and not merely a street in the ordinary sense. Where a local Act provided that every new street should be laid out at least thirty-six feet wide, a new road, eighteen feet wide, which had been sanctioned in the expectation that the adjoining owner would widen it to the full width, was held to be a street within the meaning of a section corresponding to s. 150 (*West Harlepool Corporation v. Robinson* (1897), 62 J. P. 35; 77 L. T. 387; 26 Digest 275, 133). In a case under a planning scheme which adopted this definition, a strip of land varying from thirteen to twenty feet wide and about 100 feet long, which led from a public highway to back land which it was proposed to develop, was held to be a street so that minimum requirements of the local authority could be applied to it (*Cowan v. Hendon Borough Council*, [1939] 3 All E. R. 366; 103 J. P. 285; Digest Supp.). A path in Epping Forest was held to be a street which, with the consent of the Epping Forest Conservators, might be made up under the Private Street Works Act, 1892, *post*, p. 4848 (*Woodford U. D. C. v. Henwood* (1899), 64 J. P. 148; 26 Digest 543, 2418). As to roadways belonging to railway companies, see cases in the note (b) to s. 150, *post*, p. 4390.

A "street" may be formed by adding, and dedicating to the public, a longitudinal strip of land alongside a highway. See *Richards v. Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48; 26 Digest 271, 102; *White v. Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; 26 Digest 276, 142; *Property Exchange, Limited v. Wandsworth Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435; 26 Digest 277, 143; *Portsmouth Corporation v. Hall* (1907), 71 J. P. 299; 97 L. T. 43; reversed on appeal on another point, 71 J. P. 564; 98 L. T. 513; 26 Digest 271, 106.

The word *street* in s. 156, *post*, p. 4432, is used in its ordinary sense, viz., a road with in s. 156: houses on each side. This was so held upon the corresponding words of Local Government Act, 1858 (Amendment) Act, 1861, s. 28 (*R. v. Fullford* (1864), 28 J. P. 357; 33 L. J. M. C. 122; 26 Digest 275, 130). And see *Thomas v. Roberts* (1878), 43 J. P. 574; 26 Digest 271, 107; and *R. v. Platts* (1880), 44 J. P. 765; 49 L. J. Q. B. 848; 26 Digest 275, 129, decided with reference to s. 66 of the Towns Improvement Clauses Act, 1847, *ante*, p. 4203. S. 156, *post*, p. 4432, has been repealed by Public Health (Buildings in Streets) Act, 1888, *post*, p. 4777; but it was held in *Att.-Gen. v. Laird*, [1925] Ch. 318; 89 J. P. 95; 26 Digest 272, 112, that in order to be a street within the meaning of s. 3 of that Act, *post*, p. 4778, there must be a succession of houses and buildings at least on one side of it, with some degree of continuity and proximity so as to enable a court to find as a question of fact that a highway has become a "street" in the ordinary acceptance of that word. See also note (c) under *ibid.*, s. 3, *post*, p. 4780.

The word *street* in s. 157, *post*, p. 4432, is used with reference to *new streets*. The in s. 157. section confers power to make byelaws with respect to the level, width and construction of *new streets*, and the doubt which has arisen as to whether the expression is to be interpreted according to its ordinary meaning or as above defined has given rise to some confusion. In *Baker v. Portsmouth Corporation* (1878), 3 Ex. D. 4, 157; 42 J. P. 278; 26 Digest 552, 2488, the court were of opinion that the power to make byelaws with respect to the construction of streets included a power to regulate by a byelaw the construction of buildings by the side of a street, *e.g.*, to provide that no such building should be erected until the street had been constructed to the authority's approval; and this view was "assumed" to be right by LORD SELBORNE, for the purposes of the judgment of the House of Lords in *Robinson v. Barton-Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276; 26 Digest 269, 86. It was, however, not necessary for the House of Lords, which decided against the local authority on other grounds, to approve or disapprove this view, and it is a view never acted on in framing modern byelaws. For the control of buildings by byelaws, reliance is placed on the specific powers in that behalf. But whatever be the maximum content of the word "street," it is clear that the power to make "new street" byelaws is not limited to new "streets" in the ordinary and popular sense of that term, *i.e.*, to new "ways" which have, or are intended in the immediate future to have, houses erected by the side or sides thereof; and it has been held that such byelaws apply to anything which is a street within the definition clause in this section and which is proposed to be laid out and constructed for the first time, *e.g.*, a narrow path giving access to cottages at the far end, but not at present intended to have houses built

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"Old street"
or "new
street."

by its side (*Att.-Gen. v. Gibb*, [1909] 2 Ch. 265; 73 J. P. 343; 26 Digest 271, 108). See also *R. v. Goole L. B.*, [1891] 2 Q. B. 212; 55 J. P. 535; 26 Digest 270, 95, where it was held that the byelaws as to width of new streets applied to passages proposed to be laid out at the back of rows of new houses. In the model byelaws issued by the Local Government Board and from the Ministry of Health and probably in all series of local byelaws now in force, the practical difficulty caused by applying byelaws so widely has been met by limiting words.

Although it has been held in many cases that an old highway may become for certain purposes a new street by the mere erection of houses on one or both sides of it, whereby it becomes for the first time a street in the ordinary or popular sense (see, for example, *Pound v. Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; 36 J. P. 468; 26 Digest 277, 152; *Dryden v. Putney Overseers* (1876), 1 Ex. D. 223; 40 J. P. 263; 26 Digest 278, 154; *Robinson v. Barton-Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276; 26 Digest 269, 86; *Att.-Gen. v. Rufford*, [1899] 1 Ch. 537; 63 J. P. 232; 26 Digest 278, 160; *Clerkenwell Vestry v. Edmondson*, [1902] 1 K. B. 336; 66 J. P. 324; 26 Digest 279, 161), yet the mere erection of houses does not amount to the *laying out* of such old highway as a new street within the meaning of byelaws using that phrase, for the laying out of a street involves some physical interference with or something done on the highway itself. Accordingly, it has been held that the mere erection of houses by the side of an old highway does not make it incumbent on the person building such houses to widen the highway to the width prescribed by the byelaws for the laying out of new streets. See *Devonport Corporation v. Tozer*, [1903] 1 Ch. 759; 67 J. P. 269; 26 Digest 558, 2523; *Att.-Gen. v. Gibb*, *supra*; *Att.-Gen. v. Dorin*, [1912] 1 Ch. 369; 76 J. P. 181; 26 Digest 557, 2517. These cases removed much of the practical difficulty which had been felt as to the precise point of time at which an old highway became a new street so as to involve an obligation to widen it. Now, however, by s. 30, P. H. A., 1925, Vol. V., *post*, where it appears to a local authority that the whole or any portion of an existing highway will be converted into a new street as a consequence of building operations which have been or are likely to be undertaken in the vicinity, they may by order declare such highway or a portion thereof to be a new street for the purposes of the byelaws relating to new streets, and thereupon any person building upon land abutting on or adjoining the highway or portion is to be deemed to be laying out a new street. Reference should be made to the notes to that section for an explanation of the effect of the provision. Much of the confusion which formerly existed on this subject rose from the cases decided under the Metropolis Management Acts, for under those statutes the liability of frontagers to pay paving expenses depends upon whether a way, new or old, has become a new street by the erection of buildings in it to such an extent as to give it for the first time the character of a street in the ordinary sense, and this was of course a question of fact in every case. The following metropolitan cases on this subject may be referred to: *R. v. Dayman* (1857), 7 E. & B. 672; 26 Digest 275, 134; *R. v. Islington Vestry* (1858), E. B. & E. 743; 26 Digest 515, 2186; *R. v. Fulford* (1864), 28 J. P. 357; 33 L. J. M. C. 122; 26 Digest 275, 130; *Dodd v. St. Pancras Vestry* (1869), 34 J. P. 517; 26 Digest 494, 2034; *North London Rail. Co. v. Islington Vestry* (1872), 37 J. P. 341; 26 Digest 276, 138; *Islington Vestry v. Barrett* (1874), L. R. 9 Q. B. 278; 38 J. P. 198; 26 Digest 276, 139; *Bowles v. Islington Vestry* (1875), 39 J. P. N. 757; *R. v. Shiel* (1884), 49 J. P. 68; 50 L. T. 590; 26 Digest 275, 136; *Wilson v. Camberwell Vestry*, [1892] 1 Q. B. 1; 56 J. P. 167; 26 Digest 276, 141; *Camberwell Vestry v. Crystal Palace Co.*, [1892] 2 Q. B. 33; 57 J. P. 5; 26 Digest 278, 153; *Davies v. Greenwich Board of Works*, [1895] 2 Q. B. 219; 59 J. P. 517; 26 Digest 278, 158; *White v. Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; 26 Digest 276, 152; *Battersea Vestry v. Palmer*, [1897] 1 Q. B. 220; 60 J. P. 774; 26 Digest 275, 137; *Arter v. Hammersmith Vestry*, [1897] 1 Q. B. 646; 61 J. P. 279; 26 Digest 277, 146; *Crosse v. Wandsworth Vestry* (1898), 62 J. P. 807; 79 L. T. 351; 26 Digest 277, 150; *Allen v. Fulham Vestry*, [1899] 1 Q. B. 681; 63 J. P. 212; 26 Digest 278, 155; *Simmonds v. Fulham Vestry*, [1900] 2 Q. B. 188; 64 J. P. 548; 26 Digest 279, 163; *Property Exchange, Ltd. v. Wandsworth Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435; 26 Digest 277, 143; *Att.-Gen. v. Woolwich Corp.* (1929), 93 J. P. 173; 27 L. G. R. 700; Digest Supp.

In addition to the metropolitan cases above mentioned there are other cases which have arisen outside the metropolis and decide that it is a question of fact

whether a place has become a "new street." See, for example, *Robinson v. Barton-Eccles* L. B. (1883), 8 App. Cas. 798; 48 J. P. 276; 26 Digest 269, 86; *Fellowes v. Sedgley U. D. C.* (1906), 70 J. P. 412; 4 L. G. R. 970; 26 Digest 557, 2522; *Greenwood v. Queensbury U. D. C.* (1906), 3 Architects L. R. 145; *Att.-Gen. v. Dorin*, [1912] 1 Ch. 369; 76 J. P. 181; 26 Digest 557, 2517. But, of course, the question of fact can only arise after it has been determined in what sense the word "street" has been used in the particular section under consideration. See *Eccles v. Wirral R. S. A.* (1886), 17 Q. B. D. 107; 50 J. P. 596; 26 Digest 534, 2336. And it is to be observed that the court will always inquire whether there has been any evidence to justify the finding of justices on the facts. See *Williams v. Powning* (1883), 47 J. P. 486; 48 L. T. 672; 26 Digest 557, 2518; *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; 26 Digest 267, 72.

In *Tarrant v. Woking U. D. C.*, [1914] 3 K. B. 796; 79 J. P. 22; 26 Digest 555, 2503, a street had been constructed in three portions in 1905, in 1910, and 1911 respectively and in conformance with byelaws stipulating the widths of the carriage-way and footway. The whole when completed formed one road and terminated at each end in a public highway, and this caused it to be used as a short cut for traffic. To prevent this, in 1913, the owner at the request of the residents erected piers and gates, thus reducing the clear widths in the portion completed in 1905, whereupon the respondents obtained a conviction for infringement of the byelaws regulating widths of carriageway and footway. It was held that the conviction was wrong, that when once the construction of a new street has been completed no offence against the relevant byelaw is committed by a subsequent diminution of the width below the required minimum.

Whether a piece of ground by the side of a street forms part of it or not is a question of fact (*Bell & Sons v. Great Crosby U. D. C.* (1912), 77 J. P. 37; 26 Digest street, 540, 2586; *Le Neve v. Mile End Old Town Vestry*, *infra*).

As to the use of the word "street" in incorporated enactments, see *ante*, p. 714.

Newman v. Baker (1860), 8 C. B. (N.S.) 200, decided upon the Metropolitan Building Act, 1855, may be referred to, but it throws little, if any, light on the construction of the text. *Metropolitan Board of Works v. Nathan* (1885), 50 J. P. 502; 54 L. T. 423; 26 Digest 273, 121, decided with reference to the same Act, "Street" in shows that there may be a place with houses on both sides, which is, nevertheless metropolitan not laid out as a street within the meaning of that Act. In that case artisans' dwellings had been erected opening into an approach 100 feet long and sixteen feet wide, entered from a public street through a gateway ten feet wide, over which one of the buildings was carried. A roadway had previously existed on the site, with warehouses abutting thereon, and the gateway included the site of a former gateway which had been pulled down and altered to a greater width. The approach did not afford communication with any other public street, and was for the sole use and convenience of the tenants of the dwelling, to the exclusion of the public, no right of way having ever been dedicated to the public. It was held that the approach had not been laid out "as a street for foot traffic only." See also *Daw v. London C. C.* (1890), 54 J. P. 502; 59 L. J. M. C. 112; 26 Digest 512, 2166; *London C. C. v. Davis* (1895); 59 J. P. 583; 64 L. J. M. C. 212; 26 Digest 273, 122. All these decisions were considered, and *Wood v. London C. C.* (1895); 59 J. P. 615; 64 L. J. M. C. 276; 26 Digest 273, 123, was overruled, in *Armstrong v. London C. C.*, [1900] 1 Q. B. 416; 64 J. P. 197; 26 Digest 274, 124. In that case the appellant commenced to erect buildings on a piece of land belonging to him. According to the plan the buildings were to consist of blocks of flats erected in a quadrangle form with an ornamental garden in the centre of the quadrangle formed by the blocks. The approach was to be by means of a carriageway running round the garden. Upon each side of the carriageway blocks were to be erected. Each of the blocks was to have a separate entrance from the carriageway. The appellant did not propose to dedicate any public right of way over the land to the use of the public, but intended to erect gates at the entrance to the approach, and to keep a porter there to open the gates when necessary to allow persons going to and from the flats to pass, and the carriageway was to be for the use of the tenants of the flats and of persons visiting them. It was held that the appellant had commenced to lay out or form a street within the meaning of the similar definition in the London Building Act, 1894 (11 Halsbury's Statutes 1123). The decision in *Armstrong v. London C. C.*, *supra*,

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was followed and applied in *London C. C. v. Davis* (1904), 68 J. P. 520; 91 L. T. 555; 26 Digest 274, 125. See also *Cowan v. Hendon Borough Council*, [1939] 3 All E. R. 366; 103 J. P. 285; Digest Supp.

The word *street* as used in the Metropolis Management Acts is defined in words identical with those in the text. For a case in which the term was interpreted with reference to the definition, see *St. John's, Hampstead, Vestry v. Hooper* (1885), 15 Q. B. D. 652; 49 J. P. 741; 26 Digest 273, 118; and see *St. John's, Hampstead, Vestry v. Cotton* (1886), 12 App. Cas. 1; 51 J. P. 340; 26 Digest 273, 117.

A space of ground from thirty-three to fifty-eight feet wide between the footway and the carriageway, which had always been used by the inhabitants of the houses facing it for placing carriages on and the like, paying a small rent for such user to the owner of the soil, but which had always been used by the public for passage, subject only to the user by the inhabitants of the houses, was held not to be part of a street, having been only partially dedicated to the public (*Le Neve v. Mile End Old Town Vestry* (1858), 8 El. & Bl. 1054; 22 J. P. 657; 26 Digest 443, 1594).

Turnpikes

(b) The words "not being a turnpike road" were repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173), turnpikes being obsolete.

Bridges.

(c) See *Arnell v. London and North-Western Rail. Co.* (1852), 12 C. B. 697; *Arnell v. Regent's Canal Co.* (1854), 14 C. B. 564; 26 Digest 571, 2628, as to how far a canal bridge was brought within the terms of a local paving Act. When a street passes over a canal by a bridge, the bridge may, for some purposes, be deemed to be a street (*per WIGHTMAN, J.*, in *Beaver v. Manchester Corporation* (1857), 26 L. J. Q. B. 311; 26 Digest 571, 2629). When a street is carried over a railway by means of a bridge, it is only the street, and not the bridge itself, which vests in the local authority under s. 149, *post*, p. 4375 (*G. E. Rail. Co. v. Hackney District Board of Works* (*per Lord Watson*) (1883), 8 App. Cas. 687; 48 J. P. 52; 26 Digest 494, 2032).

Where, however, in the development of a building estate, streets are carried over bridges constructed by the estate company and in consequence of a declaration under s. 152, *post*, p. 4432, the streets become highways repairable by the inhabitants at large and consequently vested in the local authority, the bridges also become vested in the local authority under s. 149, *post*, p. 4375, and the liability to repair the fabric of the bridges falls upon the local authority (*Att.-Gen. v. Hornsey B. C.*, [1927] 1 Ch. 331; 91 J. P. 61; Digest Supp.). In this case the *G. E. Rail. Co. Case, supra*, was distinguished on the ground that the rights and liabilities in respect of the bridge in that case were controlled by the Railways Clauses Consolidation Act, 1845 (14 Halsbury's Statutes 30). The criterion was laid down by ROMER, J., at p. 337, in the following words: "Where a roadway runs across a bridge spanning a river and the urban authority . . . have no means of compelling any other party to keep the bridge in repair, the bridge must vest in the authority to such an extent as is necessary to enable them to keep the bridge in repair and so maintain the street as a highway for public use."

In *Regent's Canal and Docks Co. v. Gibbons*, [1925] 1 K. B. 81; 89 J. P. 4; 26 Digest 579, 2696, it was held that where a street carried over a canal by a bridge constructed by an estate owner in the development of his estate had been taken over by a local authority under s. 152, *post*, p. 4432, the bridge had been taken over as part of the street within the meaning of a covenant by the owner to repair the bridge until taken over by the local authority. But, SWIFT, J., in his judgment expressly refrained from deciding whether the liability to repair had fallen upon the local authority.

Where a local Act of 1791 substituted a bridge for a ferry and vested in the bridge company the soil of the approaches to the ferry, it was held that, notwithstanding the right of the company to charge tolls, owners of land adjoining an approach were entitled to free access to such land over the approach since the approaches had formed part of the old highway (*East Riding, Yorkshire, C. C. v. Selby Bridge Proprietors*, [1925] Ch. 841; 133 L. T. 628; 26 Digest 571, 2630). But where a bridge was erected and maintained by purchasers under covenant in their conveyance, the vendor's successors in title were held not to be entitled to use the bridge for laying of pipes and cables for the supply of water, gas or electricity, or anything of a permanent nature which must necessarily be maintained (*Metropolitan Water Board v. Watkins*, [1937] 1 All E. R. 489; Digest Supp.).

By the Bridges Act, 1929, Vol. V., *post*, provision is made for the maintenance, improvement, reconstruction and transfer of bridges carrying public carriage roads by agreement between highway authorities and the owners of such bridges or under orders made by the Minister of Transport.

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A county bridge is one the duty of repairing which is cast by law on the inhabitants of the county at large. This duty extends to every public bridge erected before 1803, unless it is transferred to some persons or person or corporation by custom, prescription, or tenure of land. See hereon *Att.-Gen. and Doncaster Rural District Council v. West Riding of Yorkshire C. C.* (1903), 67 J. P. 173; 26 Digest 572, 2638. Bridges built since 1803 are not repairable by the county unless they have been erected in compliance with Bridges Act, 1803, s. 5 (9 Halsbury's Statutes 255), or have been declared to be so repairable pursuant to Highways and Locomotives (Amendment) Act, 1878, s. 21 (9 Halsbury's Statutes 175).

In the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, the expression "county bridge" includes any bridge which a county council are liable to repair except a bridge which they are liable to repair only by reason of the facts that the bridge is repairable by the inhabitants at large and that the road carried by the bridge is for the time being a county road (*ibid.*, s. 134; Vol. V. and 10 Halsbury's Statutes 971).

As to culs-de-sac, see *ante*, p. 714, and as to dedication, see *ante*, p. 715.

"The Act expressly calls places *streets* whether they are public property or private property, and whether the public have any rights over them or have no rights over them" (*per* JESSEL, M.R., in *Taylor v. Oldham Corporation* (1876), 4 Ch. D., at p. 407; 26 Digest 270, 96). And see *Midland Rail. Co. v. Waton*, *ante*, p. 713; *Hill v. Wallasey L. B.*, cited in notes to s. 279 of the P. H. A., 1936, *ante*, p. 569; *Armstrong v. London C. C.*, [1900] 1 Q. B. 416; 64 J. P. 197; 26 Digest 274, 124.

"House" includes schools, also factories and other buildings in which "House." *more than twenty persons are employed at one time :*

The words in italics were repealed by Factory and Workshop Act, 1878, s. 107, Sched. 6. How far this term is extended to any house remains for judicial decision. It is not to be read into s. 42 of this Act (13 Halsbury's Statutes 643) now repealed and replaced by P. H. A., 1936, s. 72, *ante*, p. 251, and therefore a steam laundry, although containing a dwelling-house for the manageress and for the clerk in charge, is not a "house" for the purpose of the removal of "house refuse," under that section (*per* CHARLES, J., in *London and Provincial Laundry Co. v. Willesden L. B.*, [1892] 2 Q. B. 271; 56 J. P. 696; 38 Digest 235, 648).

There is no definition of a "house" here, but only an extension of the term. "House" Reference, therefore, may be made to the cases upon the parliamentary and municipal franchises, and upon settlement under the Poor Law, for illustration of the word "house." *Primâ facie* a house means a dwelling-house (*Surman v. Darley* (1845), 14 M. & W. 181; 9 J. P. 792; 19 Digest 523, 3846); or a building calculated to be used as such (*Nunn v. Denton* (1844), 8 Scott, N. R. 794; 9 J. P. 71; *Daniel v. Coulsting* (1845), 8 Scott, N. R. 949; 9 J. P. 136; 20 Digest 16, 83); but the above interpretation extends the signification, and it is presumed that the term would signify any building in which persons are employed. It has been decided that it is a question of fact whether particular premises are a "house" within s. 62 of this Act (13 Halsbury's Statutes 651) (now repealed). See *Wootton v. Bishop* (1907), 71 J. P. 334; 96 L. T. 705; 43 Digest 1058, 1. In *B. Aerodrome, Ltd. v. Dell*, [1917] 2 K. B. 380; *sub nom. Brighton-Shoreham Aerodrome, Ltd. v. Dell*, 81 J. P. 205; 44 Digest 83, 644, it was held that, under a Sea Defence Order, aeroplane hangars were "houses" within the meaning of the Order.

Buildings used as places of business, in which no one slept, and which were Business originally occupied as dwelling-houses and had been converted into business premises, premises, and which were capable, with slight internal alterations, of being fitted for use as dwelling-houses, were held to be "houses" within the meaning of a local Act (*Lewin v. End*, [1906] A. C. 299; 70 J. P. 268; 19 Digest 523, 3848; see also *Lewin v. Neunes, Ltd.* (1904), 68 J. P. 164; 90 L. T. 160; 19 Digest 523, 3847).

**Note to
Section 4.**

Day school

Churches and
chapels.

A day school where there were no boarders and where none of the members of the staff resided, and in which only two maidservants dwelt, was held to be a house within s. 91 (5) of this Act (13 Halsbury's Statutes 661) (now repealed) (*Wimbledon U. D. C. v. Hastings* (1902), 67 J. P. 45; 87 L. T. 118; 36 Digest 179, 245).

A church was held not to be a house in *Angell v. Paddington Vestry* (1868), L. R. 3 Q. B. 714; 32 J. P. 742; 26 Digest 491, 2014. But this case had reference to the section of the Metropolis Management Amendment Act, 1862 (11 Halsbury's Statutes 965), which renders the owner of a house liable for the expenses of paving, etc. A church may be a house within the meaning of a local Act prescribing a building line (*per MALINS, V.-C.*, in *Folkestone Corporation v. Woodward* (1872), L. R. 15 Eq. 159; 37 J. P. 324; 26 Digest 564, 2590). A dissenting chapel was held to be a house within the meaning of the Metropolis Management Acts (*Caiger v. St. Mary, Islington, Vestry* (1881), 45 J. P. 570; 50 L. J. M. C. 59; 26 Digest 491, 2017). The ground of this decision was that the chapel had not been consecrated, and thus dedicated to permanent and unalterable uses. This decision was followed in *Wright v. Ingle* (1885), 16 Q. B. D. 379; 50 J. P. 436; 26 Digest 491, 2018. There it was held that the word "house" includes every building which is capable of being used as a human habitation. If a building, which is physically capable of being so used, is prevented, either by common law or by statute, from ever being put to such a use, it is exempted from the liability to contribute to the expense of paving a street in the metropolis. Thus, a consecrated church of the Established Church of England is exempted, because, by reason of its consecration, it becomes, by the common law, for ever incapable of being used as a habitation for man. But a leasehold chapel, vested in trustees, in trust to permit it to be used as a place of religious worship for Wesleyans, is a house, because, by the consent of the landlord, the trustees, and the *cestuis que trustent*, the trust may at any moment be put an end to. And see the note to the definition of the expression "owner," *ante*, p. 705.

Toll-house.

The word "house" under the P. H. A., 1848, was held to apply to a toll-house on a turnpike road (*Tunstall Turnpike Roads (Trustees of) v. Lowndes* (1856), 20 J. P. 374).

Whether
"house"
includes
yard, garden
or curtilage

In *Hole v. Commissioners of Milton* (1867), 31 J. P. 804, it was held that buildings and yards used for purposes of business did not come within the description of "house" (for the purposes of a rate made under a local Improvement Act), unless they were also within the curtilage of the house; but that gardens or orchards, subordinate to the occupation of the house as a residence, and occupied with the house as ancillary thereto, were so included within the word "house." Therefore, a mill which opened into a yard adjoining a house, and which had internal communication with the outbuilding and house, was held to be part of the house and properly included in the rates.

A publichouse was bounded on one side by a street, and in front by a vacant piece of ground not fenced off from the street, and separated from the house only by a narrow foot pavement also without fence, which was ordinarily used by the public as a thoroughfare, though sometimes closed. The piece of land had been treated as passing to the lessee by every demise of the publichouse since 1802; it was used by customers of the publichouse, and it furnished the only means of approach for vehicles to the front of the house. It was held that the piece of land came within the definition of a curtilage, and was part of the house within the meaning of the Lands Clauses Act, 1845, s. 92, *ante*, p. 4139 (*Marson v. L. C. & D. Rail Co.* (1868), L. R. 6 Eq. 101; 32 J. P. 565; following *Lord Grosvenor v. Hampstead Junction Rail. Co.* (1857), 1 De G. & J. 446; 21 J. P. 547; 11 Digest 180, 574). See also, as to the meaning of the word "curtilage," *Asquith v. Griffin* (1884), 48 J. P. 724; 39 Digest 247, 303; *Pilbrow v. St. Leonard, Shoreditch (Vestry)*, [1895] 1 Q. B. 433; 59 J. P. 68; 41 Digest 11, 80; *St. Martin-in-the-Fields (Vestry) v. Bird*, [1895] 1 Q. B. 428; 60 J. P. 52; 41 Digest 11, 81; *Harris v. Scurfield* (1904), 68 J. P. 516; 41 Digest 3, 7; and *Brass v. London C. C.*, [1904] 2 K. B. 336; 68 J. P. 365; 24 Digest 898, 8.

In *Wright v. Wallasey L. B.* (1887), 18 Q. B. D. 783; 52 J. P. 4; 7 Digest 549, 273, it was held that the word "house" in s. 10 of the Cemeteries Clauses Act, 1847, *ante*, p. 4213, did not include the curtilage.

"Dwelling-
house."

In *R. v. Warwickshire JJ.* (1851), 17 L. T. (o. s.) 183, a coach-house and stables adjoining, and occupied with a dwelling-house, and forming part of the same

premises, were held to be part of the "house" within the meaning of a local Paving Act.

Note to
Section 4.

As to the word "building" generally, see *ante*, pp. 689—691.

As to what is a "new building," see the notes to s. 157, *post*, p. 4432.

Where a bedroom had been erected in place of a conservatory, the external wall of the house having been raised for the purpose, and the justices upon a summons for making an "addition to an existing building" without complying with certain byelaws, held that there was no addition to an existing building on the ground that the bedroom occupied no more space than the conservatory did, the court sent back the case to the justices, holding that this fact was not, *per se*, conclusive (*Meadows v. Taylor* (1890), 24 Q. B. D. 717; 54 J. P. 757; 38 Digest 184, 240).

"New
building."
"Addition
to" a
building.

"Drain" means any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed:

As to the effect of the word "means," see *ante*, p. 687.

There may be instances of drains not comprehended within this definition as where there is a direct communication from a house to a river or canal or the sea.

"Sewer" includes sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act.

As to the word "includes," see *ante*, p. 687.

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle horses or animals of any description for sale:

See notes, *ante*, p. 1392.

"Water company" means any persons or body of persons corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

These words are substituted for the words *waterworks company* in the previous Acts. The undertaking of a waterworks company was transferred by statute to a borough. The profits of the waterworks were under a subsequent statute to be transferred to the borough improvement fund, or, at the option of the corporation, to be applied in reducing the price of water to consumers. It was held that the corporation were supplying water for "their own profit" within the meaning of the above definition (*Wolverhampton (Corporation of) v. Bilston (Commissioners of)*, [1891] 1 Ch. 315; 43 Digest 1059, 16). The point was not argued on appeal (7 T. L. R. 374).

"Waterworks" includes streams springs wells pumps reservoirs cisterns tanks aqueducts cuts sluices mains pipes culverts engines and all machinery lands buildings and things for supplying or used for supplying water, also the stock in trade of any water company

"Water-
works."

**Note to
Section 4.**

Water percolating through the ground in no defined or visible channel is not a "stream" (*M'Nab v. Robertson*, [1897] A. C. 129; 61 J. P. 468; 19 Digest 146, 1001).

As to what constitutes a "main" pipe, see *Whittington Gas Co. v. Chesterfield Gas and Water Board*, on p. 367, *ante*.

**"Bakehouse
Regulation
Act."**

"Bakehouse Regulation Act" means the Bakehouse Regulation Act, 1863 :

This Act was repealed by the Factory and Workshop Act, 1878. The latter statute contained provisions which in effect took away the control of bakehouses from local authorities and vested it in the factory inspectors, but it was repealed in turn by the Factory and Workshop Act, 1901 (8 Halsbury's Statutes 517), and the provisions as to retail bakehouses which are enforceable by local authorities are now contained in the Factories Act, 1837, s. 54 (see *ante*, p. 1506).

**"Artizans
and
Labourers
Dwellings
Act."**

"Artizans and Labourers Dwellings Act" means the Artizans and Labourers Dwellings Act, 1868 :

This Act, with many other subsequent statutes relating to artizan's dwellings, was repealed and re-enacted, with amendments, by the Housing of the Working Classes Act, 1890, which itself, so far as it relates to England, together with the numerous Acts amending it, has been repealed and re-enacted in the Housing Act, 1936, *ante*, p. 1583.

**"Baths and
Wash-houses
Acts."**

"Baths and Wash-houses Acts" means the Baths and Wash-houses Act, 1846, and the Baths and Wash-houses Act, 1847 :

These Acts no longer exist; see *ante*, p. 1193.

**"Labouring
Classes
Lodging
Houses Acts."**

"Labouring Classes Lodging Houses Acts" means the Labouring Classes Lodging Houses Act, 1851, the Labouring Classes Dwelling Houses Act, 1866, and the Labouring Classes Dwelling Houses Act, 1867 :

These Acts were repealed and re-enacted by the Housing of the Working Classes Act, 1890, which itself, so far as relates to England, together with the numerous Acts amending it, has been repealed and re-enacted in the Housing Act, 1936, *ante*, p. 1583.

**"Sanitary
Acts."**

"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act.

Schedule V., Part I., *post*, p. 4526 (now repealed by the S. L. R. A., 1893) (18 Halsbury's Statutes 1013), contains a list of repealed enactments, and has the following note appended to it: "Of the above Acts the following (namely), 'The Public Health Act, 1848,' and 'The Local Government Act, 1858,' and 'The Local Government Act (1858) Amendment Act, 1861,' and 'The Local Government Act Amendment Act, 1863,' are in the Act referred to as '*The Local Government Acts*'"; such definition ought obviously to have been inserted in this section.

**"The Local
Government
Acts."**

**"Sanitary
purposes."**

"Sanitary purposes" means any object or purposes of the Sanitary Acts :

"And of this Act," seeing that the objects and purposes of the Sanitary Acts are the same as those of this Act. The definition, being so wide, includes matters which have no direct connection with sanitation, *e.g.*, public lighting, the provision of new streets, recreation grounds and clocks.

"Court of quarter sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises : Section 4.
—"Court of quarter sessions."

The Interpretation Act, 1889, s. 13 (18 Halsbury's Statutes 996), provides that in every Act, whether passed before or after the commencement of that Act, the expression "Court of quarter sessions" shall mean the justices of any county, riding, parts, division, or liberty of a county, or of any county of a city, or county of a town, in general or quarter sessions assembled, and shall include the recorder of a municipal borough having a separate court of quarter sessions. This definition does not, however, supersede the text.

The words "or any part of the matter, as the case may be," which were in the P. H. A., 1848, s. 82, are omitted. Hence, though the district may be situated partly in the jurisdiction of one court of quarter sessions and partly in that of another, it is assumed that the matter in question will arise in one of them only. But if the matter does not arise in one of them only, both courts of quarter sessions would have jurisdiction, and consequently either. The meaning of the definition appears to be that the jurisdiction of a court of quarter sessions over any matter arising within its local limits is not to be affected by the fact that the sanitary district in which it arises is situate in part only within such limits. But it does not give to a court of quarter sessions jurisdiction over a matter not arising within its local limits, merely because the district in which the matter arises extends into such limits.

"Court of summary jurisdiction" means any justice or justices of the peace, stipendiary, or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts, or any Acts therein referred to : "Court of summary jurisdiction."

This definition and the next were repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014). It is practically the same definition as that which was contained in the S. J. A., 1879, s. 50. In *R. v. Price* (1880), 5 Q. B. D. 300 ; 44 J. P. 248 ; 18 Digest 398, 1392, it was held that the Summary Jurisdiction Acts regulated the procedure only in cases where justices were sitting and acting *judicially* as a court of summary jurisdiction, and not in cases where their duties were ministerial only. But by the S. J. A., 1884, s. 7, it was provided that s. 50 of the S. J. A., 1879, should include such justice, justices, or magistrates as therein mentioned, whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his or their commission, or, by the common law.

"Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same. "Summary Jurisdiction Acts."

The Interpretation Act, 1889, s. 13 (18 Halsbury's Statutes 996), superseding the text, provides that in every Act, whether passed before or after the commencement of that Act, the expression "Summary Jurisdiction Acts" shall mean the S. J. A., 1848 (11 Halsbury's Statutes 270), and the S. J. A., 1879 (*op. cit.* 323), and any Act, past or future, amending those Acts or either of them. The amending Acts are the S. J. (Process) A., 1881 (*op. cit.* 352) ; the S. J. A., 1884 (*op. cit.* 355) ; the S. J. A., 1899 (*op. cit.* 363) ; the Criminal Justice Administration Act, 1914, see Fourth Schedule, Extent of Repeals, the Criminal Justice Act, 1925 (*op. cit.* 395), and the other Acts detailed, *ante*, at p. 614.

**Note to
Section 4.**

Other defini-
tions in text
of Act.

ADDITIONAL DEFINITIONS.—In addition to the definitions given in the above section, several others are contained in the Act. See as to *Superintendent Constable*, s. 171, *post*, p. 4458; *Within the prescribed distance*, s. 171; *Special Act*, s. 316, *post*, p. 4517; *The Limits of the Special Act*, s. 316; *The Promoters of the Undertaking*, s. 316; *The Undertakers*, s. 316; *Owner*, Sched. II., r. 10 (13 Halsbury's Statutes 768); *Ratepayer*, Sched. II., r. 11 (*op. cit.*); *The Local Government Acts*, Sched. V., Part I, *post*, p. 4526.

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PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains.

* * * * *

Penalty on
unauthorised
building over
sewers and
under streets
in urban
district.

26. Any person who in any urban district (a), without the written consent of the urban authority (b)—

. . . (c).

(2) Causes any vault arch or cellar to be newly built or constructed under the carriageway of any street (d),

shall forfeit to the urban authority the sum of five pounds and a further sum of forty shillings for every day during which the offense is continued after written notice in this behalf from the urban authority (e); and the urban authority may cause any . . . (c) vault arch or cellar erected or constructed in contravention of this section to be altered pulled down or otherwise dealt with as they may think fit (f), and may recover in a summary manner (g) any expenses (h) incurred by them in doing so from the offender.

Form of
consent.

(a) This section is amongst those which were applied to rural district councils by the Rural District Councils (Urban Powers) Order, 1931 (S. R. & O. 1931, No. 580), *ante*, p. 3267. By Art. 3, proviso (c), of that Order, a rural district council must obtain the consent of the county council before legal proceedings are commenced by them in respect of the building or construction under the carriageway of any county road of any vault, arch, or cellar in contravention of this section as amended.

(b) There is no special mode of giving this consent, as in the former Act. It may be expressed in a letter from the clerk to the council. The consent ought to be entered on the council's minutes, and a copy of the minute forwarded to the applicant. For a form, see *Encyclopædia of Forms and Precedents*, Vol. XII., at p. 339. In some cases it will take the form of an agreement: see forms in *Encyclopædia of Forms and Precedents*, Vol. XII., at pp. 340, 344.

(c) A former paragraph prohibiting unauthorised building over sewers was repealed and a new provision substituted by s. 25 of the P. H. A., 1936, *ante*, p. 75.

Vaults under
roadway of
street.

(d) See the definition in s. 4, *ante*, p. 4336. This prohibition is introduced here because such vault or cellar might interfere with the course of a sewer hereafter to be made. It refers to the carriageway only, and has no reference to the foot-path. As to the repair of vaults, arches, and cellars under streets in districts where the P. H. A. A. A., 1890, has been adopted, see s. 35 of that Act, *post*, p. 4812.

Recovery of
forfeiture.

(e) Forfeitures are recovered by process described in s. 251, *post*, p. 4481. A forfeiture under this section is recoverable as a penalty, for it will be observed that the section speaks of the *offence*. The proceedings are, therefore, in their nature criminal, and the forfeitures must be recovered on information. The procedure,

therefore, differs from that for the recovery of expenses which are recoverable upon complaints, and are civil debts within ss. 6 and 35 of the S. J. A., 1879 (11 Halsbury's Statutes 325, 342). This distinction did not exist at the time of the passing of the Act; the procedure was then the same in both cases (cf. *ante*, p. 614). If, therefore, the penalty is proceeded for, the proceedings must be begun by information; if the expenses, by complaint under the sections just mentioned. It is to be presumed that if the works have occasioned damage to the carriageway, the authority can maintain an action in respect of such damage; and, moreover, that they may obtain an injunction to stay the works of any person before completion, so as to prevent damage which the penalty would be inadequate to repair.

The five pounds is recoverable in any case, the forty shillings only after notice. A form of notice for use under this section will be found in *Encyclopædia of Forms and Precedents*, Vol. XII., p. 338.

(f) In removing the structure the authority must not interfere with anything not forming part of it, *e.g.*, pipes or wires laid in the subsoil (*Walker U. D. C. v. Wigham* (1901), 66 J. P. 152; 85 L. T. 579; 26 Digest 566, 2598). Removal of structures.

(g) See s. 251, *post*, p. 4481, and note (e), *supra*. These expenses are recoverable on complaint, and constitute a civil debt under the S. J. A., 1879 (11 Halsbury's Statutes 323), for although the section speaks of them as recoverable from the offender, they are not in the nature of penalties for the offence, which are provided for by the previous part of the section. Recovery of expenses.

(h) In cases where expenses are not recovered and accordingly fall on the council, in the case of a rural district council, the R. D. C.s (Urban Powers) Order, 1931, Art. 5, provides that subject to the provisions of that order and to the power of the Minister under any enactment to determine in any particular case expenses of a rural district council to be special expenses, the expenses incurred by a rural district council in the execution of (*inter alia*) this section shall be defrayed as general expenses.

* * * * *

WATER SUPPLY.

Provisions for Protection of Water.

68. Any person (a) engaged in the manufacture of gas who (b) :

- (1) Causes or suffers to be brought or to flow into any stream reservoir aqueduct pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or Penalty for causing water to be corrupted by gas washings
- (2) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream reservoir aqueduct pond or place for water is fouled,

shall forfeit for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours notice (c) from the local authority or the person to whom the water belongs in that behalf, a further sum of twenty pounds for every day during which the offence is continued (d) or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority (e); but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (f).

**Note to
Section 68.**

—
Duty of gas
manufacturer
an absolute
duty.

(a) This word, according to the definition in s. 4, *ante*, p. 4334, includes any body of persons corporate or unincorporate.

(b) A private Act incorporating a gas company, and empowering them to make the necessary works, provided (s. 160, *post*, p. 4443), that if the company should at any time "cause or suffer to be conveyed or to flow" into any stream, etc., or place for water within the limits of the Act, any washing produced in making gas, or do any act to the water contained in any such stream, etc., or place for water, whereby the water therein should be fouled or corrupted, the company should forfeit for every such offence £200. S. 161, *post*, p. 4445, imposed an additional penalty of £20 per day for the continuance of such pollution more than twenty-four hours after notice. S. 165, *post*, p. 4457, made the company liable to a penalty if any water was polluted by the escape of gas. The site for the gas tank was selected by an experienced engineer, and the company built it in a proper manner, and with all ordinary care and prudence. They knew that mines had been worked in the neighbourhood, but did not know that any mines had been worked under their own lands. After some years the gas tank cracked, and the washings produced in the making of gas escaped and percolating underground polluted the water in the plaintiff's well. The company then found on inquiry that mines had been worked by strangers under part of their land close up to the tank. The crack in the tank was caused by subsidence of the soil, owing, in all probability, to the mining operations:—*Held*, by the Exchequer Chamber, that the company were liable under s. 160, *post*, p. 4443, to the penalty of £200 for polluting the plaintiff's water by the gas washings (*Hipkins v. Birmingham and Staffordshire Gas Light Co.* (1860), 6 H. & N. 250; 24 J. P. 438; 25 Digest 485, 90).

When noxious matter percolated through the soil from gasworks so as to foul a well, such percolation was held to render a company liable under the similar provisions of Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186). A well which, on account of its having become contaminated, had been disused by the owners for several years, and had been covered over, was held to be still a well within the meaning of the Act. Non-user, and the closing of his own well in consequence of its being polluted, even coupled with acceptance by the plaintiff of the use of wells substituted by the defendants, was held not to be such an abandonment of the former as to alter its character and make it no longer a well, nor could any licence to pollute it be inferred from such a state of facts. *Quære*, per KEATING, J., whether a man could by deed give an irrevocable licence to pollute a well. A prescription to foul a well will be defeated by variation and excess in the degree of fouling during the prescribed period (*Millington v. Griffiths* (1874), 30 L. T. 65; 25 Digest 488, 101). In the above case it is assumed that a well is a "place for water."

As to the meaning of the word "causes," see *Moses v. Midland Rail. Co.* (1915), 79 J. P. 367; 113 L. T. 451; 25 Digest 48, 437, which was a decision under s. 5 of the Salmon Fishery Act, 1861.

Apart from statutory provision it appears that pollution of a river by gas washings is a nuisance at common law for which an indictment will lie. See *R. v. Medley* (1834), 6 C. & P. 292; 25 Digest 485, 89, and *Herring v. Lincoln Corporation* (1920), 42 M. C. C. 41.

As to the measure of damages in an action for prejudicial interference with fishing rights by the discharge of effluent from a gasworks, see *Granby (Marquis) v. Bakewell U. D. C.* (1923), 87 J. P. 105; 21 L. G. R. 329; 36 Digest 221, 630.

Similar
statutory
provisions.

It is to be observed that the Gasworks Clauses Act, 1847, s. 21, *ante*, p. 4170, contains provisions similar to this section. Where, therefore, that Act is incorporated with a local Act, or where a local Act containing similar provisions is in force, proceedings may be taken either under this or the local Act by virtue of s. 340, *post*, p. 4521.

The Waterworks Clauses Act, 1847, s. 62, *ante*, p. 4194, which was incorporated in this Act by s. 57 (13 Halsbury's Statutes 649) (now repealed), and is printed *ante*, p. 4194, contains provisions almost identical with this section, which is taken from Nuisances Removal Act, 1855, ss. 23, 24, and extends the provisions of Public Health Act, 1848, s. 80.

The W. Gas Company unexpectedly discharged a quantity of offensive liquid from their works into the sewers of the W. Corporation. The liquid passed through the sewage works on to the sewage farm and thence into a tributary of the Thames. The W. Corporation were convicted of unlawfully and wilfully suffering a large quantity of washing or other substance produced in the making of gas to flow or pass into a tributary of the Thames contrary to s. 92 of the Thames Conservancy Act, 1894. On an appeal it was held that it was not proved the appellants had "wilfully" suffered the deleterious matter to pass into the Thames, and the conviction was quashed (*High Wycombe Corporation v. Thames Conservators* (1898), 78 L. T. 463; 14 T. L. R. 358; 25 Digest 486, 91). Proceedings had already been taken by the conservators under the same Act against the W. Gas Company in respect of this occurrence. The company pleaded guilty and were fined.

Note to
Section 68.

(c) As to notices and their service, see ss. 266, 267, *post*, pp. 592, 593.

(d) Apparently this means after notice has been given to the offender, so that Daily if no notice be given a penalty of £200 is recoverable; if notice be given, that sum penalties and the additional sum from the time of the notice is recoverable.

(e) The same provisions in the Nuisances Removal Act, 1855, ss. 23—25, were held to supersede a clause in a local Act containing similar penalties (*Parry v. Croydon Commercial Gas and Coke Co.* (1863), 15 C. B. (N. S.) 568; 28 J. P. 86; 25 Digest 487, 99; but see s. 340, *post*, p. 4521. See also note (b), *supra*).

(f) Public Health Act, 1848, s. 80, contained provisions for examining the gas pipes which are omitted here, and it is very doubtful whether s. 305, *post*, p. 4513, will apply to this case.

69. Any local authority, with the sanction of the Attorney-General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment bill in Chancery action or otherwise as they may deem advisable for the purpose of protecting any watercourse (a) within their jurisdiction from pollutions arising from sewage (b) either within or without their district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

Local
authority
may take
proceedings
to prevent
pollution of
streams.

(a) Note that this is not applicable to all rivers and streams, but only to such streams as constitute "watercourses"; and it is presumed that they are not such as belong to the authority, seeing that the ordinary laws regarding property would enable an authority to take such proceedings in reference to their own property. To constitute a "watercourse" there must be water flowing in a channel between banks more or less defined (*per TENTERDEN, L.C.J.*, in *R. v. Inhabitants of Oxfordshire* (1830), 1 B. & Ad. p. 301; 26 Digest 572, 2645). It may be natural or artificial. See *Boues v. Watson* (1879), 44 J. P. 364; 42 L. T. 27; 41 Digest 55, 398; *Smith v. Barnham* (1876), 1 Ex. D. 419; 40 J. P. 710; 44 Digest 43, 306; *Biscoe v. Drought* (1859), 11 Ir. C. L. R. 250; *Sutcliffe v. Booth* (1863), 27 J. P. 613; 32 L. J. Q. B. 136; 44 Digest 38, 275; *Remfry v. Surveyor-General of Natal*, [1896] A. C. 558; 44 Digest 22, 134. The line of a periodical "bourne flow" was held not to be a watercourse in *Pearce v. Croydon R. D. C.* (1910), 74 J. P. 429; 41 Digest 8, 53. See also, as to a similar "flow," *Att.-Gen. v. Lewes Corporation*, [1911] 2 Ch. 495; 76 J. P. 1; 41 Digest 9, 55. As to when a stream or watercourse may become a "sewer," see the last-mentioned case and other decisions in notes on pp. 48 *et seq.*, *ante*.

(b) Pollution from manufacturing or other similar processes is not provided for by this section. See, however, the Rivers Pollution Prevention Acts, 1876 and 1893, *post*, pp. 4581 and 4872, as to pollution by solid matters, sewage and manufacturing and mining pollutions, and the duties cast upon local authorities by those Acts.

As to the power of a county council to take proceedings to restrain the pollution of a stream, see the L. G. A., 1888, s. 14, *post*, p. 4736.

**Note to
Section 69.**

See also the provisions in s. 8 of the Salmon and Freshwater Fisheries Act, 1923 (8 Halsbury's Statutes 783), for the protection of waters containing fish from poisonous matters and trade effluents.

* * * * *

PART IV.

LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

As to Highways (a).

Powers of
surveyors of
highways and
vestries
under High-
way Act,
1835, vested
in urban
authority.

144. Every urban authority shall within their district exclusively of any other person (b) execute the office of and be surveyor of highways, and have exercise and be subject to all the powers authorities duties and liabilities of surveyors of highways (c) under the law for the time being in force, save so far as such powers authorities or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have exercise and be subject to all the powers authorities duties and liabilities which by the Highway Act, 1835, or any Act amending the same (d), are vested in and given to the inhabitants in vestry assembled of any parish within their district (e).

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor of the urban authority, or by or to such other person as they may appoint (f).

"County
roads."

(a) As from April 1st, 1930, considerable changes in the administration of highway law were effected by the L. G. A., 1929, Pt. III. (Vol. V. and 10 Halsbury's Statutes 903). From that date rural district councils ceased to be highway authorities and in rural districts all roads (i.e., highways repairable by the inhabitants at large and any bridge so repairable carrying the road (s. 134; Vol. V. and 10 Halsbury's Statutes 971)) became "county roads" (s. 30; Vol. V. and 10 Halsbury's Statutes 904). County councils are also in rural districts the authority for executing the Private Street Works Act, 1892, *post*, p. 4848, and certain other functions in connection with streets under the Public Health Acts. In urban districts, including non-county boroughs, all classified roads became "county roads" and urban district councils ceased to be the highway authority in respect of such roads. County councils have also certain other functions in respect of county roads in urban districts under the Public Health Acts.

County councils may delegate to a district council their functions in respect of all or some of the county roads in the district (s. 35; Vol. V. and 10 Halsbury's Statutes 910), but a district council exercising such delegated functions acts as "agent" for the county council and is not itself the highway authority. Where the provisions of this Act are amended in their application to county councils, the provision will apply in its amended form to a district council exercising delegated functions, subject, of course, to any restrictions or conditions imposed by the terms of the delegation.

Under the Trunk Roads Act, 1936, *post*, the Minister of Transport became the highway authority in respect of a number of main roads specified in the Act. These roads are to be known as trunk roads and vest in the Minister. Under the Act the Minister may delegate his functions to county, borough or urban district councils.

"Main roads" within the meaning of the Highways and Locomotives Amendment Act, 1878, *post*, p. 4602, to which s. 11 of the L. G. A., 1888, *post*, p. 4726, applied, are also as from April 1st, 1930, "county roads," and s. 11 (2) of the L. G. A., 1888, is repealed.

If, however, the "county roads" are "claimed" under s. 32, L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 906, the urban district council is to have the same functions as if, in respect of that road, they were the highway authority and the

road were an ordinary road vested in them. The urban district council will, therefore, not be the highway authority in respect of such roads, but in the application of provisions amended in their application to county councils the unamended provision will apply. Note to Section 144.

Highways which are "county roads" are (unless repairable by individuals *ratione tenuræ*, or otherwise) repairable by, or at the expense of, the county council. See the L. G. A., 1929, Pt. III., and notes thereto, Vol. V. and 10 Halsbury's Statutes 903.

Additional powers and duties are conferred upon district councils by the L. G. A., Later 1894, s. 26, *post*, p. 4907, in relation to the protection of rights of way and the prevention of obstructions and encroachments. The functions of rural district councils under that section are expressly preserved by the proviso to s. 30 (1) of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 904.

See also the Development and Road Improvement Funds Act, 1909, the Roads Improvement Act, 1925, and the P. H. A., 1925, Pt. II., Vol. V., *post*.

In rural districts parish councils are given certain powers (under the L. G. A., 1894, ss. 8, 13, *post*, pp. 4896, 4898), to acquire rights of way, and to undertake the repair of footpaths not beside roads. Urban district councils can obtain these powers by order of the M. of H. under s. 271 of the L. G. A., 1933, *ante*, p. 1152, in so far as such powers exceed those already possessed by them, *e.g.*, in respect to acquiring rights of way outside the parish.

As to prohibition of user of highways by public service vehicles, see ss. 90 and 91, Road Traffic Act, 1930.

As to prohibition or restriction of traffic during road repairs, etc., see s. 47, Road Traffic Act, 1930.

(b) This section determined the authority of a parish vestry, a highway board, or a surveyor of highways within the district of the urban authority.

As pointed out in note (a), *supra*, an urban authority is no longer the highway authority in respect of "county roads" in the district unless the roads have been "claimed" under s. 32 of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 906.

As from April 1st, 1930, every county council will, as respects such part of the Rural county as is contained in a rural district, have all such functions under the Highway Acts, 1835—1885 (9 Halsbury's Statutes 50, 191), as were exercisable by rural district councils who by virtue of the L. G. A., 1894, *post*, p. 4892, became successors of highway boards (s. 30 (1), L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 904). Under the L. G. A., 1894, rural district councils in addition to being invested with the powers of urban authorities under ss. 144—148 of this Act, *post*, pp. 4350—4375, succeeded to the powers of the highway authority then in existence in the district, and these authorities had not uniform powers so that it is only as from April 1st, 1930, that the functions of highway authorities in rural districts have become uniform throughout the country.

The section in the text is not applied to county councils by the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 883.

(c) The powers and duties of a surveyor of highways depend upon the Highway Act, 1835, and amending statutes. For further information on this subject, reference must be made to treatises on highway law, *e.g.*, Pratt on Highways, 18th ed. One branch of the subject requires notice here, *viz.*, that relating to the liability of an authority as surveyors of highways in cases of accident caused by non-repair, improper condition, or obstruction of the highways. The authorities are now applicable to the case of both county and urban councils.

A surveyor of highways was not liable to an action for injury caused by non-repair of the highways (*Young v. Davis* (1862), 7 H. & N. 760; 26 J. P. 743; affirmed repair not in Exchequer Chamber (1863), 2 H. & C. 197; 26 Digest 398, 1241). The ground of this decision was that the surveyor had no liability other than that which had previously existed in the case of the inhabitants of the parish. It had already been decided that when the duty, the neglect of which was the cause of action, was one attaching to the inhabitants of a county, the remedy was by indictment and not by action (*Russell v. Men of Devon* (1788), 2 Term Rep. 667; 26 Digest 587, 2780); and it was held that the county surveyor merely took the place of the inhabitants for the purpose of suing and being sued, but without any further liability (*M'Kinnon v. Penson* (1854), 9 Exch. 609; 18 J. P. 164; 26 Digest 588, 2782). In *Young v. Davis*, *supra*, the same principles were held to govern the liability of the surveyor of high-

Note to
Section 144.

Mere non-
repair not
actionable—
cont.

ways. The whole principle, while not being doubted, was the subject of criticism by the Court of Appeal in *Skilton v. Epsom and Ewell U. D. C.*, [1937] 1 K. B. 112; [1936] 2 All E. R. 50; 100 J. P. 231; Digest Supp.

In *Hartnall v. Ryde Commissioners* (1863), 4 B. & S. 361; 27 J. P. 599; 26 Digest 399, 1242, town commissioners were held liable for an accident caused by their neglect of a duty imposed upon them in their corporate capacity by the Towns Improvement Clauses Act, 1847, s. 49 (13 Halsbury's Statutes 547); and in *Ohlby v. Ryde Commissioners* (1864), 5 B. & S. 743; 28 J. P. 663; 26 Digest 399, 1243, where the accident arose from neglect of a similar duty imposed by s. 52 of that Act, they were also held liable. *Hartnall v. Ryde Commissioners*, *supra*, was distinguished by WILLES, J., in *Parsons v. Vestry of St. Matthew, Bethnal Green*, *infra*, and by KELLY, C.B., in *Wilson v. Halifax (Mayor of)* (1868), L. R. 3 Ex. 114; 32 J. P. 230; 38 Digest 34, 203: see also *Pictou Municipality v. Geldert*, *infra*; and even if it cannot be said to be overruled, its authority has been seriously shaken by the following decision of the Court of Appeal. By the L. Improvement Act, 1846, s. 36, the corporation were declared to be the surveyors of highways for the borough. By s. 37, the control of the streets was vested in them. By s. 38 they were empowered to form or pave streets with such materials as they should think fit. By s. 53 it was enacted that they should be liable to be indicted at common law for the want of sufficient repair of any highway in the borough in the same manner as any person or persons liable to the repair of such highways was or were before the passing of the Act. Whilst a horse and trap were being driven along a highway, the horse was injured owing to a hole in the roadway. There was no evidence of misfeasance, but the want of repair was admitted. In an action by the owner of the horse it was held that the liability imposed on the corporation by the Act of 1846 was a liability of the same nature as that placed on the inhabitants of a parish by the common law, which could only be enforced by the Crown by means of an indictment, and that the corporation were not liable to be sued by an individual for damages for nonfeasance. The court pointed out that *Hartnall's Case*, *supra*, was decided upon a special statute, and said that since *Cowley v. Newmarket L. B.*, *infra*, it is no longer law so far as it lays down a general proposition in regard to liability for nonfeasance where liability to repair highways is imposed by an Act of Parliament (*Maguire v. Liverpool Corporation*, [1905] 1 K. B. 767; 69 J. P. 153; 26 Digest 400, 1255; and cf. *Law v. Corporation of Glasgow* (1916), 54 Sc. L. R. (2) 125). See also *Att.-Gen. and Ormerod Taylor & Son, Ltd. v. Todmorden Corp.*, [1937] 4 All E. R. 538, and *Newsome v. Darton U. D. C.*, [1938] 3 All E. R. 93; 102 J. P. 409.

The Metropolis Management Act, 1855, s. 90 (11 Halsbury's Statutes 904), contains provisions similar to that in the text transferring the liabilities of surveyors of highways to the metropolitan vestries. It was held, with reference thereto, that the vestries were under no greater liability than the surveyor would have been, and that an action would not lie against them for an accident caused by the non-repair of a highway (*Parsons v. Vestry of St. Matthew, Bethnal Green* (1867), L. R. 3 C. P. 56; 32 J. P. 55; 26 Digest 399, 1244). In *Lampard v. Commissioners of Sewers of the City of London* (1884), 1 T. L. R. 114; 26 Digest 399, 1248, the plaintiff sued in respect of injuries sustained through the defective condition of the pavement, due to the alleged negligence of the defendants. The alleged negligence consisted merely in non-repair, and it was held that he was rightly non-suited. And see *Guardians of Holborn v. Vestry of St. Leonard, Shoreditch* (1876), 2 Q. B. D. 145; 41 J. P. 38; 26 Digest 399, 1246, *per* LUSH, J.; *Taylor v. St. Mary Abbots, Kensington (Vestry of)* (1886), 2 T. L. R. 668, *per* MANISTREY, J.; and *Newton v. St. Matthew, Bethnal Green (Vestry)* (1899), Times, March 29th. The pavement over a cellar in the metropolis has been held to be repairable as part of the highway (*Hamilton v. St. George's, Hanover Square*, *ante*, p. 1949; cf. *Skilton v. Epsom and Ewell U. D. C.*, *supra*).

In *Nash v. Rochford R. D. C.*, [1917] 1 K. B. 384; 81 J. P. 57; 26 Digest 405, 1272, it was held that the defendants could not be held liable for the misfeasance of a former highway authority not resulting in damage in their time, no such liability being passed on to them under the Local Government Act, 1894, *post*, p. 4892.

It was questioned in *Wilson v. Halifax (Mayor of)*, *supra*, whether a local board were liable to an action for injuries caused by non-repair of a highway; and it was expressly decided that they were not in *Gibson v. Preston (Mayor of)* (1870), L. R. 5

Q. B. 218; 34 J. P. 342; 26 Digest 357, 834; approved and followed in *Cowley v. Newmarket L. B.*, [1892] A. C. 345; 56 J. P. 805; 26 Digest 400, 1251.

Note to
Section 144.

See also on the subject of nonfeasance, *Municipality of Pictou v. Geldert*, [1893] A. C. 524; 26 Digest 400, 1252; *Gibraltar Sanitary Commissioners v. Orfila* (1890), 15 App. Cas. 400; 38 Digest 16, 86; *Sydney Municipal Council v. Bourke*, [1895] A. C. 433; 59 J. P. 659; 26 Digest 400, 1254; and *Harbinson v. Armagh C. C.*, [1902] 2 I. R. 538; 26 Digest 400, 1252 vi.

Misfeasance
actionable,

But nonfeasance in the sense of mere failure to keep in proper repair must be carefully distinguished from misfeasance, in respect of which an action will lie. Where a heap of stones was left by the side of a road without light, and the plaintiff, on a dark night, drove into it, and was injured, the heap having been left there by the negligence of persons employed by the local board to repair the roads, it was held that the board were liable to an action for the negligence of their servants, and that they were not exempt from liability by reason of the corresponding section of the P. H. A., 1848, which imposed on them the same duties and liabilities as a surveyor of highways had (*Foreman v. Canterbury (Mayor of)* (1871), L. R. 6 Q. B. 214; 35 J. P. 629; 26 Digest 408, 1294). The principle of this decision may be thus briefly stated. A surveyor of highways was liable to a stranger for any act of personal negligence, or for the negligence of his own servants. The district council are in the same position, the only decision to the contrary, *Holliday v. St. Leonard, Shoreditch* (1861), 11 C. B. (N. S.) 192; 26 J. P. 135; 26 Digest 408, 1293, being overruled. See *Mersey Docks v. Gibbs* (1866), L. R. 1 H. L. 93, per BLACKBURN, J., at p. 119; 30 J. P. 467; 38 Digest 35, 209. See also per BRETT, L.J., in *Glossop v. Heston and Isleworth L. B.* (1879), 12 Ch. D. 102, at p. 120; 44 J. P. 36; 44 Digest 51, 365, and see also *Jones v. Westminster City Council* (1915), 79 J. P. N. 112.

An authority may, of course, be relieved from liability if the plaintiff is guilty of contributory negligence, or if seeing the danger he deliberately runs the risk (*Butterly v. Drogheda Corporation*, [1907] 2 I. R. 134; *Torrance v. Ilford U. D. C.* (1909), 73 J. P. 225; 25 T. L. R. 355; 26 Digest 405, 1273; and see also *Charlesworth v. Darton U. D. C.* (1915), 79 J. P. Newsp. 316, and *Jones v. Westminster City Council*, *supra*).

The following cases show how narrow is the dividing line between what is non-feasance and what is misfeasance. Appellants, who were both the highway and sanitary authority, dug a trench along a road under their control for the purpose of laying a sewer. When the sewer was laid they filled in the trench and opened the road for traffic. About a week after the road was thrown open the respondent was driving along it in a cab. The cabdriver found that the part of the road where the trench had been filled in was soft; he crossed to the off side to avoid that danger, and ran into a heap of rubbish which had been deposited by a wrong-doer upon that side of the road, with the result that the cab was overturned, and respondent suffered injuries. The appellants knew that the heap of rubbish had been deposited upon the road. The jury found that at the time of the accident the part of the road that had been filled in was dangerous to traffic. The House of Lords held that the appellants were liable on the ground that they were guilty of misfeasance in throwing open the road when it was not fit for traffic, and that such misfeasance was the cause of the accident (*Shoreditch Corporation v. Bull* (1904), 68 J. P. 415; 90 L. T. 210; 26 Digest 412, 1320), *semble*, the capacity in which the appellants were acting was immaterial (*ibid.*). See especially the speech of Lord HALSBURY in this case, and the interpretation put upon it by the Court of Appeal in *Dawson & Co. v. Bingley U. D. C.*, [1911] 2 K. B. 149; 75 J. P. 289; 26 Digest 407, 1286; and *Newsome v. Darton U. D. C.*, [1938] 3 All E. R. 93; 102 J. P. 409; Digest Supp.; and see also *Small v. Fermanagh C. C.* (1914), 78 J. P. N. 366, and *Warren v. Devon C. C.* (1915), L. T. Journal, February 20th, where in an action in a county court the defendants were held to be liable for an accident caused by throwing open a road for traffic after tar spraying, before the surface of such road was in a condition to receive the traffic.

In *Parkinson v. W. R. County Council* (1922), 20 L. G. R. 308; 26 Digest 409, 1298, the defendants were also held liable for damages due to a road being prematurely thrown open to traffic after repairs not fully completed.

In *Ryan v. Tipperary C. C.*, [1912] 2 I. R. 392, the defendants were repairing one half of a road and had left the other half open for traffic. The plaintiff, driving

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Section 144.**

along this other half, collided with a large stone lying close to the grass margin opposite to the steam roller. The jury negatived contributory negligence. It was held that the act of the council in interfering with the road imposed on them the obligation of taking care that the portion left open for use was reasonably fit and safe, and that, the jury having found them to have been negligent in not removing the stone, they were liable in damages. See *Walsh v. Mayo C. C.* (1905), 39 Ir. L. T. 189, as to the respective liabilities of a county and district council in connection with the repair of a bridge. A plaintiff driving at night along a street in the defendants' district, drove over the edge of a ravine at the end of it. He alleged that the defendants were guilty of negligence in so laying out the street that it terminated in a ravine, without providing posts and fencing or placing a watchman or lights at the spot to give warning, and also that they had set a trap by reason that the lights in the street were in line with a lamp in W. street on the opposite side of the ravine so as to give the impression that the street was continuous. The road in question was dedicated to the public many years ago, and it was made up by the defendants as a street in the year 1903. The jury found that the street was dangerous; that the unfenced ravine was a trap; that when they made it up and opened it to the public as a street the defendants took no sufficient care to warn the public of the danger; that the public were invited by them to pass along the street as if it was continuous to W. street; and that the plaintiff was not guilty of contributory negligence. It was held that as the defendants knew of the existence of the ravine, their leaving the road with a trap in it known to them and hidden from persons using the road at night was an actionable wrong and a breach of their duty to take reasonable care, assuming such a duty existed; that the defendants having made up the road, their omission to fence was not mere nonfeasance but misfeasance; that although when a road is dedicated as a highway, the public, or the road authority, take it as it is with all its defects, yet if a road authority undertake a duty with regard to it and make it up and open it to the public as a made-up street they must exercise due care and have due regard to the safety of those who will use it; and that the defendants, having exercised their powers, as the jury thought, negligently in such a way as to leave a hidden trap for persons passing along the road at night, exposing them to unnecessary and avoidable danger, were liable to the plaintiff. It was held, further, that the defendants having undertaken to light the street, and having done so negligently and inadequately, were also liable on this ground (*McClelland v. Manchester Corporation*, [1912] 1 K. B. 118; 76 J. P. 21; 26 Digest 404, 1270). This was a judgment of LUSH, J., and in *Moul v. Croydon Corporation* (1918), 82 J. P. 283; 16 L. G. R. 595; 26 Digest 401, 1260, certain passages in that judgment are explained by that same judge. In that case the plaintiff suffered damages from an accident caused by the swelling and bulging of the wood paving of a carriageway which caused the road surface to rise above its normal level. It was held that no distinction can be drawn between neglect to repair a road out of repair through ordinary wear and tear and neglect to repair a road in disrepair caused by the surface rising above its ordinary level. In *Thompson v. Bradford Corporation and Tinsley*, [1915] 3 K. B. 13; 79 J. P. 364; 26 Digest 406, 1278, the decision in *McClelland v. Manchester Corporation* was followed. There the defendants were altering a street by throwing the footpath into the carriageway, and to do this it was necessary to remove a telegraph pole which existed on the footpath. The removal of the pole was done by the Post Office authorities, and in filling in the hole they did their work negligently, with the result that the plaintiff's steam wagon passing along the highway a few days later sank into the hole and the wagon was considerably damaged. It was held that both defendants were liable, the corporation upon the ground that they were altering the character of part of an old road (i.e., in effect making a new road), and their duty was to so make it that when they threw it open for public use it should be reasonably safe for the purpose for which it was intended to be used; the Post Office authorities upon the ground that having done, perhaps voluntarily, a piece of work, they did it negligently. *Baldwin's, Ltd. v. Halifax Corporation* (1916), 80 J. P. 357; 14 L. G. R. 787; 26 Digest 407, 1289, was a case of damage by flooding of the plaintiffs' mills during a short period of exceptionally heavy rainfall. In 1867 the defendants obtained statutory powers to construct a road up a very steep and high bank along the base of which runs a stream upon which the plaintiffs' mills are situated. To ease the gradients the plan of the road is necessarily zig-zag in

form. On the surface of the hill, especially on the lower slopes, there was a large amount of disintegrated shale caused by weathering and rain storms over a long period. The road was drained by a channel with catchpits at intervals discharging into an earthenware pipe sewer. The road planned and constructed in this way formed a catchwater which drained practically the whole of the hillside. During a very heavy rainstorm water and vast quantities of shale flowed over the road into the valley beneath and flooded the plaintiff's mills. It was held, on the ground of misfeasance, and not mere nonfeasance, that the defendants were liable, and that they had failed to exercise reasonable care in the construction and maintenance of the undertaking.

Note to
Section 144.

A local authority in executing works for the purpose of carrying a highway over a ravine in order to link it up with another highway on the opposite side of a ravine pulled down an old wall at the termination of a road and constructed a contractor's road from the point formerly occupied by the wall in the direction of the highway on the opposite side of the ravine, this contractor's road terminated in a sharp declivity and a fence was erected across this road. The fence was not lighted and bore no warning signs. The plaintiff driving along the road, misled by the lights on the other side of the ravine into thinking the road was continuous, and not seeing the fence until too late, crashed through the fence and into the ravine. In an action for damages for negligence it was held that there being an invitation to the plaintiff to pass along the road, he was an invitee and it was therefore incumbent upon the authority to take proper steps to warn the public and prevent danger and that the failure so to do rendered them liable in damages (*Oldham v. Sheffield Corpn.* (1927), 91 J. P. 69; 43 T. L. R. 222; Digest Supp.). Cf. *Coleshill v. Manchester Corpn.*, [1928] 1 K. B. 776; 92 J. P. 37; Digest Supp. Where a highway authority in widening a road cut away part of a bank in such a way as to affect the stability of a tree standing on private ground at the summit of the bank, so that the dangerous character of the tree was obvious from the highway, the local authority were held liable in damages for injuries caused to the occupants of a motor coach passing along the highway upon whom the tree fell (*Mackie v. Western District Committee of Dumbartonshire County Council* (1927), 91 J. P. 158). As to the liability of the owner of a tree which fell across a highway and caused injury to passengers, see *Noble v. Harrison*, [1926] 2 K. B. 332; 90 J. P. 188; 33 Digest 189, 316.

In *Breen v. Tyrone C. C.* (1908), 42 Ir. L. T. 250, an authority who had repaired the planking of a bridge with a defective board were held liable in respect of injuries to a horse, beneath which the board gave way. To lay a deep layer of broken stone across the full width of a road for a considerable distance, instead of rolling it in as the work proceeds, may amount to misfeasance (*Torrance v. Ilford U. D. C.* (1909), 73 J. P. 225; 25 T. L. R. 355; 26 Digest 405, 1273). So, too, though to leave unfilled a hole which has appeared in a road is only nonfeasance, to fill it with improper material apparently, but not really, solid, may be misfeasance (*Meeling v. St. Mary, Newington (Vestry)* (1893), 10 T. L. R. 54).

An action was brought against a corporation to recover damages for injury sustained in consequence of the defendants negligently placing certain pitch or tar on a road, and negligently allowing the same to remain for an unreasonable time, whereby the road became uneven and dangerous. The plaintiff's mare had slipped on a pool of pitch or tar, which had, in consequence of hot weather, oozed up between the sets of wood or stone from the asphalt beneath. The road had been constructed a long time before the accident. A county court judge held that there was no evidence of misfeasance. It was held, on appeal, that as no evidence was given before him that the road had been improperly constructed, he was right in concluding that the accident did not arise from the misfeasance of the defendants (*Holloway v. Birmingham Corporation* (1905), 69 J. P. 358; 3 L. G. R. 878; 26 Digest 401, 1256). In connection with the subject of wood paving the following decision as to the rights of adjoining owners may be noticed. A tramway company's special Act provided that the company should pave a certain road with wood; and they paved it with soft wood creosoted. There was another kind of wood paving consisting of hard wood blocks; but the company considered the creosoted wood more suitable to the locality. Dust and fumes from the creosoted wood caused damage to the plants in a market garden adjoining the road. It was held that the laying of creosoted wood blocks was a non-natural user of the land, and that the company were liable for the damage

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caused thereby to the market garden. As there were two kinds of wood paving at the company had laid that kind which caused damage, they were not protected by their special Act (*West v. Bristol Tramways Co., Ltd.*, [1908] 2 K. B. 14; 72 J. 243; 36 Digest 194, 356). In *Dell v. Chesham U. D. C.*, [1921] 3 K. B. 427; 115 J. P. 186; 26 Digest 408, 1290, the drainage from the surface of a road was rendered impure by the tarspraying of the road surface. The drainage passed through a drain and flowed into and damaged certain watercress beds of the plaintiff. It was held that the defendants had power to spray the road, but that they could not justify the damage to the plaintiff without showing that it was a necessary consequence of the exercise of the power.

In *Nicholson v. Southern Rail. Co. and Sutton and Cheam U. D. C.*, [1935] 1 K. B. 558; 99 J. P. 141; Digest Supp., where, in consequence of a highway having been made up by the highway authority, the level of unfenced adjoining land was lowered so as to cause a dangerous drop from the edge or kerb of the reconstructed highway, a pedestrian who slipped from the highway on to the land and was injured was held entitled to recover from the highway authority but not from the owners of the land.

A vestry, acting as a sewer authority, laid down a new sewer, and their contractors in so doing, laid bare a wrought-iron service water-pipe, about two and a half feet below the surface. The surveyor of the vestry knew that the pipe was old and rusty, and likely, therefore, to become leaky. In filling in the trench some clay was put round the pipe, but not in such quantity or manner as to prevent it from leaking. A few months afterwards the pipe leaked, and the surrounding clay and earth, being thereby moistened, gave way under a van which the plaintiff was driving, and the van being overturned, the plaintiff was seriously injured. It was held that the vestry knew, or ought to have known, the character and condition of the pipe at the time when it was laid bare, and consequently were liable for negligence in not having taken special precautions against its leaking thereafter (*Cox v. Paddington Vestry* (1891), 64 L. T. 566; 26 Digest 411, 1315). On the other hand an authority are not liable where some individual, not acting as their agent, interferes with the highway in laying a drain. C., the owner of certain cottages in a highway, received a notice from the defendants requiring him to connect them with the main sewer. In compliance therewith he dug a trench in the road and made the connection to the satisfaction of the defendants' surveyor, and he then filled up the trench. The soil afterwards subsided, and the subsidence caused an accident to the plaintiff while driving in a pony cart. The defendants were both the sewer authority and the highway authority:—Held, that the defendants were not liable as the sewer authority on the ground that the notice did not constitute C. their agent, nor as the highway authority, on the ground that no action would lie against a local board for personal injuries arising from the non-repair of a highway (*Steel v. Dartford L. B.* (1891), 60 L. J. Q. B. 256; 26 Digest 399, 1249).

It has been held to be nonfeasance only, and therefore not actionable, to allow the surface of a path to slip down into adjoining premises with the result that the path becomes dangerous (*Short v. Hammersmith Borough Council* (1910), 75 J. P. 82; 104 L. T. 70; 26 Digest 401, 1257); to fail to clean out a highway drain into which roadside "grips" discharge (*Irving v. Carlisle R. D. C.* (1907), 71 J. P. 212; 5 L. G. R. 776; 26 Digest 403, 1265); to fail to remove overgrowing grass from such grips (*Masters v. Hampshire C. C.* (1915), 79 J. P. 493; 13 L. G. R. 879; 26 Digest 404, 1266); to fail to lop trees overhanging from an adjoining park owned by the authority (*Tregellas v. London C. C.* (1897), 14 T. L. R. 55; 26 Digest 403, 1264) cf. *Trinder v. G. W. Ry. Co.* (1919), 35 T. L. R. 291; Digest Supp., and *Simon v. L. G. O. Co.* (1907), 23 T. L. R. 463; 8 Digest 74, 502.

So, too, an authority are not liable for merely omitting to fence a dangerous ditch by the side of a highway (*Wilson v. Halifax Corporation* (1868), L. R. 3 Ex 114; 32 J. P. 230; 38 Digest 34, 203). Where, however, a council pulled down a fence erected to guard a ditch by the side of the road, and had not replaced it, so that the place was dangerous in times of flood, and at such a time a man driving along the road at night drove into the ditch and was drowned, it was held that the district council, in an action against them under Fatal Accidents Act, 1846 (Lord Campbell's Act) (12 Halsbury's Statutes 335), were liable as for an act of misfeasance (*Whyler v. Bingham R. D. C.*, [1901] 1 K. B. 45; 64 J. P. 771; 26 Digest 389, 1168).

In *Skilton v. Epsom and Ewell U. D. C.*, [1937] 1 K. B. 112; [1936] 2 All E. R. 50; 100 J. P. 231; Digest Supp., where a cyclist was injured in a public highway by a flying stud dislodged by a car, the stud having been placed in the highway by the highway authority under the Road Traffic Act, 1930 (23 Halsbury's Statutes 607), for traffic regulation purposes and having subsequently worked loose, it was held that assuming, but without deciding, that the stud was physically part of the highway, the plaintiff could still recover against the highway authority because the stud was not brought on to the highway as part of the highway maintenance but for purposes of traffic direction, and the placing of it in such a manner that it became defective amounted to the placing of a nuisance on the highway.

A corporation, who were the highway and lighting authority, erected a post in the centre of a footpath at the entrance thereto, to prevent cattle straying up the path, and near the post they placed a lamp, which they were in the habit of lighting at nights. The plaintiff was passing along the footpath at night, when the lamp was not lighted, and in consequence of the darkness came against the post, and was injured. It was held that an action lay (*Lamley v. East Relford (Mayor, etc. of)* (1891), 55 J. P. 133; 26 Digest 390, 1171). See also *Knight v. Sheffield Corporation*, post, p. 4448. The same thing has been held of an unilluminated bollard on a tram refuge (*Polkinghorn v. Lambeth Corporation*, [1938] 1 All E. R. 339; 102 J. P. 131; Digest Supp.), and an unilluminated post on a towing path (*Attorney-General v. Wilcox*, [1938] Ch. 934; [1938] 3 All E. R. 367; Digest Supp.). And as to unlit or misleading lamps, see also *Thurrold v. St. George's, Hanover Square*, cited on p. 4358, post; *Donaldson v. Woolwich Corporation* (1911), 74 J. P. N. 27, and *McClelland v. Manchester Corporation*, and *Oldham v. Sheffield Corporation*, cited on pp. 4354, 4355, ante. For cases arising out of reduced lights under wartime restrictions, see note (a) to s. 161 at p. 4448, post.

A railway bridge spanned a road in the defendants' district. After the erection of the bridge the road was dedicated to the public, and it subsequently became vested in the defendants. At the time of dedication the road was higher at the entrance of the bridge than at the exit, and the road continued in a similar state up to the commencement of the action. The plaintiff, whilst driving under the bridge, met with an accident, his head coming in contact with the bridge in consequence of the road being higher at that part. In an action by him against the defendants for damages for injuries sustained, it was held that as the road was dedicated subject to this obstruction, the action could not be maintained (*Warner v. Wandsworth District Board of Works* (1889), 53 J. P. 471; 26 Digest 444, 1616). See on the same point, *Fisher v. Prowse* (1862), 2 B. & S. 770; 26 J. P. 613; 26 Digest 265, 66. Where, however, in repairing a road under a bridge a ridge was improperly left in the surface, a driver, whose head was thereby brought into contact with the bridge, recovered damages against the authority (*Hill v. Tottenham U. D. C.* (1898), 79 L. T. 495; 15 T. L. R. 53; 26 Digest 404, 1268).

In *Brackley v. Midland Ry. Co.* (1916), 80 J. P. 369; 14 L. G. R. 632; 26 Digest 302, 333, a railway company had voluntarily constructed a footbridge close to a station to supplement a level crossing. Although the footbridge was largely used by passengers to and from the station it did not connect different parts of the station, but had direct connection with the highway and was used as part of the same without interruption. In using the steps to the bridge at a time when snow had fallen, the plaintiff fell and sustained injuries. It was held that the footbridge had been dedicated to the public and that the defendants were under no duty to persons using it to maintain and cleanse it or clear away the snow. On this question, reference should now be made to the Rights of Way Act, 1932 (25 Halsbury's Statutes 191), and the cases decided thereunder, post.

An authority who had erected a drinking fountain in a highway were held liable for injuries caused by the fall of a stone displaced by a sightseer climbing thereon (*McLoughlin v. Warrington Corporation* (1910), 75 J. P. 57; 36 Digest 51, 318).

A householder, stepping out from his front door, put his front on a piece of sandstone lying on the pavement and fell. Evidence was given that a heap of sandstone had been tipped by the defendants' servants in the roadway close to the kerb in front of the plaintiff's house, and that subsequently several stones were seen on the pavement. There was no barrier between the kerb and the stones. The plaintiff having

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responsi-
bility for
contractors,
servants,
licensees, etc.

been nonsuited, it was held that the nonsuit was wrong, for there was some evidence that the piece of sandstone was on the pavement by the action of the defendants' servants (*Gould v. Birkenhead Corporation* (1909), 74 J. P. 105; 26 Digest 409, 1295). See also as to liability for obstacles left on a highway, cases in the succeeding paragraphs as to acts of contractors.

In *Taylor v. Greenhalgh* (1874), L. R. 9 Q. B. 487; 38 J. P. 599; (1876), 24 W. R. 311; 26 Digest 409, 1302, and *Pendlebury v. Greenhalgh* (1875), 1 Q. B. D. 36; 40 J. P. 36; 26 Digest 410, 1303, two cases arising out of one accident, it appeared that the defendant in each was a parish surveyor of highways appointed by the vestry at a salary. By a resolution of the committee of management it was ordered that a part of a road should be raised, and that the defendant should employ men to do it. He contracted with G. to do the work at so much per yard, the vestry finding the materials, but G. employing his own men. During the progress of the work one-half of the width of the road was raised first, and the other half left temporarily about a foot lower. No fence or light was put up to warn persons using the road, and the plaintiffs, driving at night, were upset and injured. The defendant had not personally interfered in doing the work, or in directing the road to be left as it was; and it was held by the Court of Queen's Bench that he was not liable to the plaintiffs either at common law, or by reason of the Highway Act, 1835, s. 56 (9 Halsbury's Statutes 76), the court holding that the persons whose negligence caused the accident were not servants of the defendant so as to bring him within *Foreman v. Canterbury (Mayor of)*, *ante*, p. 4353. But the Court of Appeal, taking a different view of the facts rather than of the law, directed judgment to be entered in each case for the plaintiffs. They did not decide whether the defendant would have been liable for his contractor's negligence, if he had employed him to do everything that was necessary; but they pointed out that, for the safety of the public, it was necessary that the work while in progress should be fenced and lighted at night, and that the defendant had only contracted for labour; therefore the duty of fencing and lighting remained on him, and he was responsible for negligence in performing this duty, whereby the damage was caused.

In *Reid v. Darlington Highway Board* (1877), 41 J. P. 581; 26 Digest 410, 1305, a highway board finding that the wall of a bridge needed repair, instructed their surveyor to employ S., a contractor, to do the work. S. thereupon, by his servants, did the work, and the surveyor did not interfere. In the course of the work, S.'s servants left stones in the highway, which were not lighted at night, and R. drove into them, and was injured. It was held that there was no evidence upon which the board or its surveyor could be held liable for the injury to R. As to the liability of the contractor in such a case, see *Blake v. Thirst* (1863), 2 H. & C. 20; 34 Digest 160, 1253, which may be compared with the previous case of *Overton v. Freeman* (1852), 11 C. B. 867; 26 Digest 410, 1309.

A highway board directed a heap of stones to be placed on the side of a road, at a place which was used as a depôt for stones used in repairing. The carter, in placing the stones there, allowed them to project a few inches on to the road. A person driving along the road at night, drove against the heap and met his death. His widow and children thereupon brought an action under Fatal Accidents Act, 1846 (Lord Campbell's Act) (12 Halsbury's Statutes 335) against the board. It was held that, inasmuch as the carter was really a servant of the defendants, and not a contractor, they were liable (*Tucker v. Axbridge Highway Board* (1888), 53 J. P. 87; 5 T. L. R. 26; 26 Digest 409, 1296).

For cases in which a highway authority was held not liable for injuries suffered by children in playing on materials deposited on a road for the purpose of road improvements, see *Liddle v. North Riding of Yorkshire C.C.*, [1934] 2 K. B. 101; 98 J. P. 319; Digest Supp., and *Morley v. Staffordshire C.C.*, [1939] 4 All E. R. 92; Digest Supp.

A metropolitan vestry caused a heap of sand to be laid in a street near a gas lamp which was lighted under contract by a gas company. The lamp, by accident, was not lighted one night, and the plaintiff drove into the heap and sustained injury. It was left to the jury to say whether the leaving of the heap unlighted was negligence, and the jury awarded damages (*Thurrold v. St. George's, Hanover Square*, Times, December 7th, 1898).

A gas company, in the repair of mains in a highway, placed a fire pail on which was

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a ladle containing molten lead on unenclosed land adjacent to a highway. A passer-by accidentally knocked over the fire pail at a time when the same was unattended and unguarded, and the plaintiff, a young child, was injured by the molten lead. It was held that the gas company was liable on the ground that what they were doing was dangerous unless precautions were taken to guard persons using the highway from the danger. (*Crane v. South Suburban Gas Co.*, [1916] 1 K. B. 33; 80 J. P. 51; 26 Digest 436, 1539).

But where a motor lorry laden with bales of cotton caught fire on a highway, without any default on the part of the driver who did all that he could to put the fire out and telephoned for the fire brigade, it was held that he could not be convicted under s. 72 of the Highway Act, 1835 (9 Halsbury's Statutes 86), for causing damage to the highway (*Tunnicliffe v. Pickup*, [1939] 3 All E. R. 297; Digest Supp.).

The rule deducible from the more recent decisions (see notes to s. 265, *post*, p. 4494) appears to be that where a contractor is employed to do work which will necessarily entail danger to the public unless proper precautions are taken, the authority employing him will be responsible if he fails to take such precautions, e.g., if he leaves the road improperly made up in ridges (*Hill v. Tottenham U. D. C.* (1898), 79 L. T. 495; 26 Digest 404, 1268), or does not properly fill in and ram trenches (*Gray v. Pullen* (1864), 5 B. & S. 970; 29 J. P. 69; 34 Digest 165, 1279; *Thompson v. Bradford Corporation*, *ante*, p. 4354), or negligently breaks pipes laid in the road (*Hardaker v. Idle U. D. C.*, [1896] 1 Q. B. 335; 60 J. P. 196; 34 Digest 161, 1255), or leaves stones or material unguarded and unlighted on the highway (*Penny v. Wimbledon U. D. C.*, [1899] 2 Q. B. 72; 63 J. P. 406; 26 Digest 410, 1308; *Clements v. Tyrone C. C.*, [1905] 2 I. R. 542; *Lancaster v. West Ham L. B.* (1886), 2 T. L. R. 820; and see also *Pinn v. Rew* (1916), 32 T. L. R. 451; 34 Digest 162, 1268. And cf. *Wilson v. Hodgson's Kingston Brewery Co.* (1915), 80 J. P. 39; 32 T. L. R. 60; 26 Digest 418, 1363, and *Kimber v. Gas Light and Coke Co.*, [1918] 1 K. B. 439; 82 J. P. 125; 36 Digest 18, 83). On the other hand, for mere casual or collateral negligence of a contractor's labourer, e.g., leaving a tool on the road, the authority are probably not liable (*Penny v. Wimbledon U. D. C.*, *supra*, per A. L. SMITH, L.J.).

As to the distinction between a contractor and servant, see further, *Steel v. S. E. Rail. Co.* (1855), 16 C. B. 550; 34 Digest 31, 87; *Reedie v. L. & N. W. Rail. Co.* (1849), 4 Ex. 244; 34 Digest 27, 56; *Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392; 34 Digest 163, 1271.

As to the liability of an authority for the acts of a licensee reference may be made to *Gilbert v. Trinity House Corporation* (1886), 17 Q. B. D. 795; 38 Digest 39, 230. They are not responsible for those of a person acting under independent statutory powers unless they are bound to supervise the work (*Barham v. Ipswich Dock Commissioners* (1885), 54 L. T. 23; 34 Digest 166, 1290; *Steel v. Dartford L. B.*, *ante*, p. 4356; *Burrows v. City of London Sewer Commissioners* (1888), 4 T. L. R. 262; 26 Digest 401, 1258).

A cart was damaged through contact with a heap of stones which had been allowed to remain after nightfall on a highway. The stones had been laid there by a carter who acted under the orders of a person to whom the surveyor of a local board had given general directions as to repairing the road; but the surveyor did not himself know that the stones had been laid on the road. It was held that the facts did not show any evidence of an offence by the surveyor within the meaning of the Highway Act, 1835, s. 56 (9 Halsbury's Statutes 76) (*Hardcastle v. Bielby*, [1892] 1 Q. B. 709; 56 J. P. 549; 26 Digest 413, 1327). It seems to have been assumed in this case that the section would apply to a surveyor of a highway authority; but such is apparently not the case, the authority being themselves surveyors of highways within the meaning of the section. See *R. v. Bradford*, [1908] 1 K. B. 365; 72 J. P. 61; 26 Digest 356, 819.

Although a district council are not liable for injuries sustained in consequence of their nonfeasance as surveyors of highways, there are cases where, by reason of their acting in other capacities, they may be liable for some negligent omission which occasions injury to persons using the highway. In one case, as the plaintiff was riding along a highway, under which was a sewer, his horse trod on a grid or grating, put there to drain the surface water off the highway into the sewer. The grid being in a defective state, gave way, and the horse's leg was injured. The

Liability of
council as
sewer autho-
rity or water
authority.

Note to Section 144. — plaintiff sued the local board, who were surveyors of the highways under the P. H. A., 1848, ss. 68, 117, and in whom the sewers were vested by ss. 43, 45 of the same Act. It was held that, though the defendants were not liable as surveyors of the highways, they were liable as owners of the sewer, of which the grid formed part, for negligence in not keeping the grid in a proper state (*White v. Hindley L. B.* (1875), L. R. 10 Q. B. 219; 39 J. P. 533; 26 Digest 412, 1322). In another case, the defendants, who were the highway and the sewer authority, employed a contractor to construct a sewer under a highway within their district. The contractor dug a trench, which he afterwards filled in with earth, and the roadway was apparently made good. The work was done under the directions and to the satisfaction of the defendants' surveyor. Some months later a subsidence of the soil in the trench took place, without any assignable cause, leaving the road apparently sound. The plaintiff's horse, in consequence of the surface giving way, fell into the trench and was injured. It was held that there was evidence that the work of filling in the trench had been negligently and improperly done; that the defendants were liable as the sewer authority, and, perhaps, also as the highway authority (the latter liability apparently depending on the negligence of the defendants' surveyor, as in *Pendlebury v. Greenhalgh*, ante, p. 4353) (*Smith v. West Derby L. B.* (1878), 3 C. P. D. 423; 42 J. P. 615; 26 Digest 411, 1317). As to the liability of the contractor in such a case, see *Hyams v. Webster* (1868), L. R. 4 Q. B. 138; 26 Digest 460, 1761. All, or nearly all, of the cases on the subject were reviewed in *Borough of Bathurst v. Macpherson* (1879), 4 App. Cas. 256; 43 J. P. 827; 26 Digest 405, 1274, where a small municipality in New South Wales were held by the Privy Council to be liable for an accident caused by a defective drain, the neglect to repair which had led to the falling away of the brickwork and the consequent formation of a dangerous hole in the road. The governing fact in this case was that the conduct complained of was, in view of the Privy Council, misfeasance (*per Lord HOBHOUSE in Municipality of Picton v. Geldert*, [1893] A. C., at p. 531; 26 Digest 400, 1252; and see *Sydney Municipal Council v. Bourke*, ante, p. 4353, and *Andrews v. Merton & Morden U. D. C.* (1921), L. J. C. C. R. 50; 43 M. C. C. 194 (a county court case). In such cases, however, it is necessary for the plaintiff to prove that there has been negligence on the part of the authority (*Lambert v. Lowestoft Corporation*, [1901] 1 K. B. 590; 65 J. P. 326; 26 Digest 411, 1316). As to what amounts to proof of negligence when a sewer has given way and caused a subsidence, see *ibid.* and *Hart v. St. Marylebone Borough Council* (1912), 76 J. P. 257; 10 L. G. R. 502; 41 Digest 26, 206.

The predecessors of a district council in 1893 constructed a sewer with manholes under a main road repairable by the county. In 1906 the cover of one of the manholes projected above the granite setts surrounding it, and the setts projected above the surrounding surface of the roadway. The plaintiff when cycling was upset by the manhole, and he sued the council. The jury found that the manhole was defective and was the cause of the accident, and that the defects in the manhole were due to improper construction. The Court of Appeal held that there was no evidence of improper construction in the first instance, but ordered a new trial as to whether there had been negligence in maintaining the manhole (*Winslowe v. Bushey U. D. C.* (1908), 72 J. P. 259; 26 Digest 411, 1314).

In *Papworth v. Battersea Borough Council*, [1916] 1 K. B. 583; 80 J. P. 177; 26 Digest 412, 1319, a local authority had paved and made up a road in 1883. For the purpose of carrying away the surface water they had constructed a gully near the side of the road covered with a grating, but the grating and its framework caused a considerable depression in the road. The work however was done with due care and skill and in accordance with the usual method at the time. In June, 1912, the plaintiff, whilst cycling along the road and passing over the grating, owing to the excessive depression was thrown from her bicycle and sustained injuries. The jury found that the depression was dangerous to a careful cyclist, but that the local authority were not negligent in not having discovered the defect. It was held that as the local authority in the execution of their statutory powers had exercised due care and skill in the original construction of the grating and as they were not negligent in not having discovered the danger, they were not liable though the work turned out subsequently to be dangerous.

In *Newsome v. Darton U. D. C.*, [1938] 3 All E. R. 93; 102 J. P. 409; Digest

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Supp., the local sanitary authority who were also the local highway authority made a trench in a highway for the purpose of executing certain drainage work. Three years after filling in, a depression formed, and it was found by a jury that, although the original work was executed without negligence, the highway had become dangerous due to the work of the defendants. The defendants in their capacity as local sanitary authority were accordingly held liable to a passenger who was injured through the defect in the highway.

Where the local authority had placed studs in the road to mark the centre line for directing traffic, they were held liable for damage caused by a defective stud (*Skilton v. Epsom & Ewell U. D. C.*, [1937] 1 K. B. 112; [1936] 2 All E. R. 50; 100 J. P. 231; Digest Supp.).

White v. Hindley L. B., ante, p. 4360, was approved in *Blackmore v. Vestry of Mile End Old Town* (1882), 9 Q. B. D. 451; 47 J. P. 52; 26 Digest 399, 1247. In that case a water meter, the property of a water company, and used for measuring the water supplied by them to the defendants, the vestry of a metropolitan parish, for watering the streets, was placed by the defendants in a box of theirs sunk in the footway of one of the streets, and covered with an iron flap. The defendants were surveyors of highways under the Metropolis Management Act, 1855, s. 95, and were by s. 116 (11 Halsbury's Statutes 914) authorised to cause the streets in their parish to be watered. The plaintiff while walking along the street stepped on to the iron flap, and by reason of its having worn smooth and dangerous, he fell and was injured. It was held that although the defendants might not as surveyors of highways be liable for negligence in not keeping the flap in a proper state, they were liable in their capacity as the authority for watering the street, in which capacity they had placed the flap there. Where it is the duty of the consumer to maintain the necessary apparatus of water supply he is *primâ facie* liable if damage ensues arising out of its disrepair, thus in *Mist v. Metropolitan Water Board* (1915), 79 J. P. 495; 13 L. G. R. 874; 26 Digest 418, 1373, the cover of a meter pit in the pavement was held to be part of the apparatus, and therefore the consumer was *primâ facie* liable. In another case the iron cover of a valve connected with a water main was properly fixed in a highway by the defendants, but in consequence of the ordinary wearing away of the highway, the valve cover projected an inch above it. The plaintiff's horse stumbled over the valve cover and was hurt. In action against the defendants, who were both the water authority and the highway authority, for the injury to the horse, it was held that it was the duty of the defendants to make such arrangements that works under their care should not become a nuisance to the highway, and that the plaintiff was entitled to recover (*Kent v. Worthing L. B.* (1882), 10 Q. B. D. 118; 47 J. P. 23; 26 Digest 410, 1312). The last-mentioned decision was, however, questioned in *Moore v. Lambeth Waterworks Co.* (1886), 7 Q. B. D. 462; 50 J. P. 756; Digest Supp., where it was held that a water company, authorised or required by Act of Parliament to maintain a water plug in a highway, is not liable in damages to a passer-by who falls over the plug by reason of the road having worn away round it, the plug itself being in good order. The Court of Appeal intimated that perhaps *Kent v. Worthing L. B.* could be distinguished on the ground that the defendants were both highway authority and water authority, but that, if not, it could not be upheld. And it was expressly overruled by the Court of Appeal on precisely similar facts in *Thompson v. Brighton (Mayor, etc. of)*; *Oliver v. Horsham L. B.*, [1894] 1 Q. B. 332; 58 J. P. 297; 26 Digest 400, 1253. See, further, as to accidents due to water plugs, the cases collected in notes to the Fire Brigades Act, 1938 (Vol. V. and 31 Halsbury's Statutes 585).

A local authority, under the powers of the P. H. A., 1848, required the defendant's predecessor in title, together with other frontages, to do certain work on a street which had since become a highway, and on default being made, did the work themselves and charged the expenses to the frontagers. The work included the laying of two sloping iron carriage plates over the gutter between the roadway and the footway to facilitate the passage of horses and carriages from the roadway to the stables of two of the houses, one of which now belonged to the defendant. The two carriage plates did not meet by a few inches, thus leaving a small hole into which the defendant stumbled. This hole was opposite the defendant's house. In an action by the plaintiff against the defendant for damages for personal injuries, it was held that the carriage plates formed part of the highway, which was vested in the local authority,

**Note to
Section 144.**

and that the defendant was not liable (*Jones v. Rew* (1910), 74 J. P. 321; 79 L. J. K. B. 1030; 26 Digest 412, 1323). In *Horridge v. Makinson* (1915), 79 J. P. 484; 84 L. J. K. B. 1294; 26 Digest 542, 2407, the defendant was the owner of a house abutting upon a street which had been made up and declared a public highway. In the lower part of the wall of the house there was an opening into a coal shoot, and the local authority, by raising the level of the footpath, covered the lower portion of this opening. To admit of access thereto, however, they left an opening next the wall in the footpath and did not put any grating or cover over this opening. The plaintiff, whilst passing along the footpath, fell into this opening and sustained injuries. It was held that the defendant was not liable, the hole amounted to a nuisance but it was left by the local authority and the defendant could not be said to have permitted the continuance of the nuisance. In *Daniel v. Rickett, Cockerell & Co., Ltd. & Raymond*, [1938] 2 K. B. 322; [1938] 2 All E. R. 631; Digest Supp., the plaintiff, who was injured by falling through a cellar flap in the pavement which had been left open and unguarded during the delivery of coal, was held entitled to recover against both the coal merchant and the occupier of the premises. And see *Wilson v. Hodgson's Kingston Brewery Co.* (1915), 80 J. P. 39; 85 L. J. K. B. 270; 26 Digest 418, 1368. In that case the defendants were sued for damages for personal injuries to the plaintiff, who, passing along a pavement adjoining the defendant's premises, tripped over flaps to a cellar grating which had been negligently left open and fell into the cellar. The cellar grating was open to receive delivery of barrels of beer, which delivery being made by an independent contractor and not under the defendant's orders, it was held that the defendants were not liable to the plaintiff.

**Liability for
breach of
agreement
under the
Tramways
Act, 1870.**

A corporation are liable for damages caused by non-repair of a road which they have agreed to repair under s. 29 of the Tramways Act, 1870, *ante*, p. 4283 (*Howitt v. Nottingham Tramways Co.* (1883), 12 Q. B. D. 16; 43 Digest 345, 43). Some doubt was cast upon that decision by the Court of Appeal in *Steward v. North Metropolitan Tramways Co.* (1886), 16 Q. B. D. 556; 50 J. P. 324; 38 Digest 136, 998, but this was removed by *Aldred v. West Metropolitan Tramways Co.*, [1891] 2 Q. B. 398; 55 J. P. 824; 43 Digest 345, 44, and *Barnett v. Mayor, etc. of Poplar*, [1901] 2 K. B. 319; 43 Digest 345, 45.

**Indictments
for non-
repair of
highways.**

In *R. v. Poole (Mayor, etc. of)* (1887), 19 Q. B. D. 602; 52 J. P. 84; 26 Digest 376, 1015 (where the earlier cases were discussed), an indictment against a municipal corporation for non-repair of a highway alleged that the highway was in decay, and that the corporation "acting by the council as the sanitary authority for the urban district" ought to repair and amend the same, etc., but there was no allegation to show how the defendants were liable, nor did the indictment conclude "against the form of the statute." At the trial the judge intimated his willingness to make any amendment within his power, but no amendment was in fact made. After a verdict for the Crown, it was held:—(1) that the indictment was bad, and that the defendants were entitled to judgment *non obstante veredicto*; (2) that even assuming the necessary amendments to be made, the defendants were entitled to judgment, there being nothing in the P. H. A., 1875, *ante*, p. 4331, to make the urban authority liable to indictment for non-repair in the same sense as that in which the parish or persons liable *ratione tenuræ* were liable. In a subsequent case, however, it was held that an indictment would lie under the Highways and Locomotives (Amendment) Act, 1878, s. 10, *post*, p. 4603, against an urban sanitary authority acting as the highway authority for non-repair of a highway, for the section in question provides a statutory mode of raising the question of the authority's liability to repair (*R. v. Wakefield (Mayor, etc. of)* (1888), 20 Q. B. D. 810; 52 J. P. 422; 26 Digest 385, 1140). In *R. v. Morse*, [1904] W. N. 114; 26 Digest 385, 1136, it was held that the procedure under s. 95 of the Highway Act, 1835 (9 Halsbury's Statutes 106), has not been impliedly repealed by the Highways and Locomotives (Amendment) Act, 1878, s. 10, and accordingly a rule *nisi* for a *certiorari*, asked for on the ground that the proper parties to be indicted were a rural district council, whose funds were liable to bear the expense of the repairs, was discharged. In *R. v. Shipley Parish Council* (1897), 61 J. P. 488; 13 T. L. R. 486; 26 Digest 376, 1016, an endeavour was unsuccessfully made to indict a parish council for non-repair of a highway.

For recent cases in which the indictment has been prepared against the inhabitants of a parish, see *R. v. Ewell (Inhabitants)* (1921), 85 J. P. N. 572; *R. v. Bilericay (Inhabitants)* (1939), Times, June 17th.

An appeal lies to the Court of Appeal from a conviction on indictment at common law for the non-repair of a highway and not to the Court of Criminal Appeal under the Criminal Appeal Act, 1907 (4 Halsbury's Statutes 725) (Supreme Court of Judicature (Consolidation) Act, 1925, s. 29 (4 Halsbury's Statutes 160)).

Trustees liable under a local Act to repair a road were held not liable to be indicted for manslaughter for the death of a person in consequence of an accident caused by the non-repair of the road (*R. v. Pccock* (1851), 17 Q. B. 34; 15 Digest 797, 8612).

The plaintiffs, a local board, had preferred an indictment against the defendants for interfering with a public road. At the trial of the indictment, an agreement for compromise was made between the solicitors, and sanctioned by the judge, and it was afterwards confirmed by a deed executed by the plaintiffs and defendants. By this deed the defendants covenanted to restore the road, which they had broken up, within seven years, and the plaintiffs covenanted that, when this had been done, they would consent to a verdict of "not guilty" on the indictment. The defendants having failed to restore the road, the plaintiffs sued them on their covenant, claiming specific performance and damages:—*Held*, that as the indictment was for a public injury, the agreement to consent to a verdict of "not guilty" was against public policy and illegal, and that the plaintiffs could not maintain an action on the defendants' covenant. The court maintained the view taken in *Keir v. Leeman* (1846), 9 Q. B. 371; 11 J. P. 38; 15 Digest 706, 7640; and refused to follow the dictum of JAMES, L.J., in *Fisher & Co. v. Apollinaris Co.* (1875), 10 Ch. App. 297, at p. 302; 39 J. P. 564; 15 Digest 706, 7641 (*Windhill L. B. v. Vint* (1890), 45 Ch. D. 351; 12 Digest 260, 2727).

Where a local authority acting as surveyors of highways occasion damage to any person, they are not liable to compensate him under s. 308, *post*, p. 4515. In *Burgess v. Northwich L. B.* (1880), 6 Q. B. D. 264; 45 J. P. 256; 26 Digest 335, 661, it appeared that a highway had subsided owing to brine-pumping operations, and the houses abutting on it had subsided also. The surface of the road remained continuous, so that traffic could still pass along it; but a hollow was formed, and the road at its new level was liable to be flooded so as to render traffic impossible. The defendants placed materials on the road, so as to raise the surface at the point of the lowest subsidence about four feet higher than at the commencement of the work. The plaintiffs raised their houses simultaneously and claimed compensation for the expense of so doing. It was stated as a fact in the case that, having regard to the obstruction by floods, the raising of the road was reasonably necessary to put the road into a proper state for traffic; but excluding the consideration of floods, the raising to the extent described was not necessary to put the road into a proper state. It was held that, as the highway was vested in the defendants (s. 149, *post*, p. 4375), no action of trespass could have been maintained by the plaintiffs, even if more materials had been placed on the road than a surveyor of highways could justify; that the plaintiffs had no right to have the road maintained at the level to which it accidentally and recently sank; that the works of the defendants were not done "in exercise of any of the powers" of the Act within s. 308, *post*, p. 4515, which mean powers created by the Act, and not merely powers transferred by s. 144 from the surveyor to the local board, but were done, if not entirely in pursuance of their duty as surveyors of highways, at all events in exercise of such powers as surveyors of highways have; and consequently that the plaintiffs were not entitled to compensation (*cf. also Atherton v. Cheshire C. C.*, *post*, p. 4382). The decision in *Burgess v. Northwich L. B.* seems to follow a dictum of BRAMWELL, L.J., in *Nutter v. Accrington L. B.*, *post*, p. 4383. In a later case a road had subsided, and was partially restored not long afterwards. The road having been again raised forty years later, BOWEN, L.J., held that the burden of proof was upon the local board to show that they had simply restored the road to its original level, and in the absence of evidence, held that they were acting under the powers given by the P. H. A., 1875, and were liable to make compensation accordingly (*Pearsall v. Brierley Hill L. B.* (1883), 11 Q. B. D. 735; 47 J. P. 628; affirmed (1884), 9 App. Cas. 595; 49 J. P. 84; 11 Digest 292, 2209), and see also *Rochford v. Essex C. C.* (1915), 85 L. J. Ch. 281; 14 L. G. R. 33; 26 Digest 407, 1288, where the highway authority were held liable for the damage to a fence caused by the additional earth pressure thereon as the result of raising the level of highway, and *Howard-Flanders v. Maldon Corporation*, *post*, p. 4383.

Note to Section 144.

No indictment for manslaughter by non-repair.

Compromise of indictments.

Liability for altering level of highway.

**Note to
Section 144.**

In *Hoare v. Kingsbury U. D. C.*, [1912] 2 Ch. 452; 76 J. P. 401; 13 Digest 384, 1127, a building owner, on depositing plans for the erection of houses, entered into an agreement with the council whereby he agreed to throw a strip of land into an adjoining highway, and the council agreed to make up and adopt such strip. It was held that the agreement was one for the widening of a highway made by the council, not as the highway authority, but as an urban authority under s. 154 of this Act, *post*, p. 4425, and that consequently s. 174 (13 Halsbury's Statutes 698) (now repealed; see *ante*, p. 1125), applied to it. Cf. also *Arnott v. Whibly U. D. C.*, cited on p. 4384, *post*.

Right and
duty to
repair, re-
move obstruc-
tions, etc.

A person who is under no duty to repair a highway or bridge has, as against the owner of the soil, no right to repair it (*Campbell Davys v. Lloyd*, [1901] 2 Ch. 518; 26 Digest 449, 1649); if he does so without objection being taken, he cannot recover his expenditure from the party liable to do the repairs (*Macclesfield Corporation v. G. C. Rail. Co.*, [1911] 2 K. B. 528; 75 J. P. 369; 26 Digest 581, 2713). Nor, in general, is a member of the public entitled to abate a nuisance in a highway (*Dimes v. Petley* (1850), 15 Q. B. 276; 26 Digest 448, 1639; *Roberts v. Rose* (1866), L. R. 1 Ex. 82; 30 J. P. 5; 36 Digest 204, 465). Under the L. G. A., 1894, s. 26, *post*, p. 4907, it is the duty of every district council to prevent as far as possible the stopping or obstruction of any public right of way. In *Bagshaw v. Buxton L. B.* (1875), 1 Ch. D. 220; 40 J. P. 197; 26 Digest 449, 1652, the court refused to grant an injunction to restrain a local authority from removing an enclosure of the highway which amounted to a nuisance; but did not decide whether an authority as surveyor of highways could lawfully abate an obstruction before obtaining a judicial determination that it was in fact an obstruction. It has now, however, been expressly decided that an urban district council have power to remove an obstruction without any preliminary conviction, and to recover from the person who placed it on the highway the expenses of removing it (*Reynolds v. Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296; 26 Digest 449, 1654); and it seems clear that a rural council is in the same position (*Louth U. D. C. v. West* (1896), 60 J. P. 600; 65 L. J. Q. B. 535; 26 Digest 391, 1176; *Harris v. Northamptonshire C. C.* (1897), 61 J. P. 599; 26 Digest 449, 1656). See the latter case as to the powers of a county council in this behalf. In *Gaby v. Palmer* (1916), 80 J. P. 212; 14 L. G. R. 491; 38 Digest 209, 436, which was a case decided under a local Act, it was held that an owner of land was liable to remove and otherwise make secure certain unsafe ground abutting upon a highway from which there was an apprehended danger of obstruction to the public using the highway. See also generally, *National Telephone Co. v. St. Peter Port (Constables of)*, [1900] A. C. 317; 42 Digest 896, 63, and *Webster v. Bakewell R. D. C.* (1916), 80 J. P. 437; 14 L. G. R. 1109; 26 Digest 313, 450. The damage done in the removal must not be excessive (*Seaton v. Slama* (1932), 77 Sol. Jo. 11; 31 L. G. R. 41; Digest Supp.), and if in a claim by the landowner for damages the defendant claims that he is doing no more than enforce a public right of way, the fiat of the Attorney-General is necessary (*ibid.*). As to the obstruction of a highway by the loading and unloading of carts, see *Att.-Gen. v. Brighton and Hove Co-operative Supply Association*, [1900] 1 Ch. 276; 26 Digest 425, 1442; *Att.-Gen. v. W. H. Smith & Son* (1910), 74 J. P. 313; 26 T. L. R. 482; 26 Digest 425, 1443; *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138; Digest Supp., and cf. also *Ruoff v. Long & Co.*, [1916] 1 K. B. 148; 80 J. P. 158; 36 Digest 33, 186, a case where damage was caused by the interference of third parties with a standing vehicle; and *Simpson v. Metropolitan Water Board* (1917), 15 L. G. R. 629; 36 Digest 21, 101. As to obstruction by theatre queues, see *Lyons, Sons & Co. v. Gulliver*, [1914] 1 Ch. 631; 73 J. P. 98; 26 Digest 428, 1475.

Use of steam
rollers.

The plaintiffs, a gas company, laid pipes beneath certain streets, as they were bound by statute to do, for the purpose of supplying gas to light the streets and houses therein. The streets were vested in the defendants by certain statutes which gave them the authority of the surveyor of highways, with the duty to repair, but prescribed no particular mode of repair. The defendants used steam rollers as being a mode of repair most advantageous to both the ratepayers and the public, but such rollers were so heavy as frequently to injure the plaintiffs' pipes, although laid sufficiently deep not to have been injured by the ordinary mode of repair if such rollers had not been used. The plaintiffs were held entitled not only to damages for the injury done, but also to an injunction to restrain the defendants from using steam rollers in such a way as to injure the pipes (*Gas Light and Coke Co. v. St. Mary*

Note to
Section 144.

Abbotts, Kensington (Vestry of) (1885), 15 Q. B. D. 1; 49 J. P. 469; 26 Digest 432, 1508; and see *Gas Light and Coke Co. v. St. George's, Hanover Square* (1887), 3 T. L. R. 581; *Alliance and Dublin Consumers Gas Co. v. Dublin C. C.*, [1901] 1 I. R. 492; 25 Digest 479, 561. See also as to liability for an explosion due to the fracture of a gas pipe by a steam roller, *Driscoll v. Poplar District Board* (1897), 62 J. P. 40; 25 Digest 480, 57; as to liability for an explosion due to the fracture of a gas pipe in the course of laying a sewer, *Hardaker v. Idle D. C.*, [1896] 1 Q. B. 335; 60 J. P. 196; 34 Digest 161, 1255; and as to liability for damage to pipes by a traction engine, *Armagh Union v. Bell*, [1900] 2 I. R. 371, and *Chichester Corporation v. Foster*, [1906] 1 K. B. 167; 70 J. P. 73; 26 Digest 431, 1500; cf. also *Cavan C. C. v. Kane*, [1910] 2 I. R. 644; 26 Digest 470, t; and as to liability for sparks from a steam roller setting fire to houses (*Moss v. Christchurch R. D. C.*, [1925] 2 K. B. 750; 23 L. G. R. 331; 26 Digest 432, 1509). As to the liability to make bridges fit to carry traction-engine traffic, see *Sharpness New Dock Co. v. Att.-Gen.*, *Att.-Gen. v. G. N. Rail. Co.*, and *Att.-Gen. for Ireland v. Lagan Navigation Co.*, *post*, p. 4372.

With reference to the powers and duties of a district council in stopping up high-ways, reference may be made to *United Land Co. v. Tottenham L. B.* (1884), 13 Q. B. D. 640; 48 J. P. 726; 26 Digest 476, 1890. It was there held that the charges of a solicitor employed by an urban authority to conduct proceedings at the instance of an individual for the stopping up or diverting of a highway under the Highway Act, 1835, ss. 84, 85 (9 Halsbury's Statutes 97, 99), are not "expenses" within the meaning of s. 84 of that Act so as to be recoverable under s. 101 of this Act (13 Halsbury's Statutes 665). And, *semble*, all the steps required by s. 85 to be taken for the purpose of obtaining the order of sessions, are ministerial acts which ought to be done by the surveyor of the authority appointed under Part IV. of the L. G. A., 1933, *ante*, p. 860.

As to the right of a council to receive the income of a charity given for the repair of a road or bridge, see *Att.-Gen. v. Day*, [1900] 1 Ch. 31; 64 J. P. 88; 26 Digest 372, 980; *In re Hall's Charity, Severn Commissioners v. Charity Trustees and Worcestershire C. C.* (1911), 76 J. P. 9; 28 T. L. R. 32; 26 Digest 578, 2693.

A local board had not, as surveyors of highways, any authority over turnpike roads (*per* BRAMWELL, B., in *Nutter v. Accrington L. B.* (1878), 4 Q. B. D. 375; 26 Digest 335, 660. And see s. 148, *post*, p. 4369, and *Lancashire J.J. v. Rochdale (Mayor of)*, cited in the notes thereto).

It was held in *Taylor v. Meltham L. B.* (1878), 47 L. J. C. P. 12, that an action against a local authority as surveyors of highways might be commenced within six months allowed by s. 264 (now repealed), and need not be commenced within the three months prescribed by the Highway Act, 1835, s. 109. And again, where a local board in repairing a road negligently left a heap of stones upon it, whereby injury was caused to the plaintiff, it was held that the board were acting under this Act and not under the Highway Act, and that the period of limitation was, therefore, six and not three months (*Kay v. Atherton L. B.* (1878), 42 J. P. 792; 38 Digest 124, 916). But where a corporation were surveyors of highways by a local Act, which made them subject to all such liabilities as any surveyors of highways were subject to by virtue of the law for the time being in force, and there was nothing to show that the corporation were acting under this Act, it was held that the period of limitation was three and not six months (*Burton v. Corporation of Salford* (1883), 11 Q. B. D. 286; 47 J. P. 614; 38 Digest 124, 917). This case was followed in *Graham v. Newcastle-upon-Tyne (Mayor, etc. of)* (No. 2), [1893] 1 Q. B. 643; 57 J. P. 596; 38 Digest 114, 818, and *Taylor v. Meltham L. B.* and *Kay v. Atherton L. B.* were expressly overruled, it being held that an urban authority constituted surveyors of highways by s. 144 of the P. H. A., 1875, were not liable to be sued for negligence in the management of highways unless the action was commenced within three months under s. 109 of the Highway Act, 1835. However, s. 264 of this Act and s. 109 of the Highway Act, 1835, are both now repealed by s. 2 of the Public Authorities Protection Act, 1893, *post*, p. 4875, by s. 1 of which a period now of twelve months' limitation next after the act, default or neglect complained of, or in the case of a continuance of injury or damage, twelve months next after the ceasing thereof, is made generally applicable.

As to the discretion of a district council as surveyors of highways when it is sought to make a road in their district a public highway, see *R. v. Dukinfield* (1863), 4 B. & S. 158; 27 J. P. 805; 26 Digest 362, 873.

**Note to
Section 144.**

Highway
Acts.

Limit on
highway rate
abolished.

Ministerial
acts.

Inhabitants
of urban
district not
liable to rates
for roads
outside
district.

Power of
urban
authority to
agree as to
making of
new public
roads.

(d) The chief of these are Highway Acts, 1835, 1841, 1845, 1862, 1864 (9 Halsbury's Statutes 50, 121, 122, 142); Annual Turnpike Acts Continuance Act, 1865 (*op. cit.* 281); Highways and Locomotives (Amendment) Act, 1878 (*op. cit.* 166); Highway Rate Assessment and Expenditure Act, 1882 (*op. cit.* 188); Highways and Bridges Act, 1891, *post*, p. 4833.

The provisions for making highway rates were contained in ss. 216, 217 (13 Halsbury's Statutes 716).

(e) By the Highway Act, 1835, s. 29 (9 Halsbury's Statutes 64), the consent of four-fifths of the inhabitants of any parish contributing to the highway rate, at a meeting specially called for that purpose, was necessary before such rate might exceed 2s. 6d. in the pound on the whole in any one year. That section was held to be impliedly repealed by the provisions in the text in the case of a highway rate made by an urban authority under this Act (*Dyson v. Greetland L. B.* (1883), 47 J. P. N. 260; (1884), 13 Q. B. D. 946; 48 J. P. 596).

(f) As to the construction of this paragraph, see *United Land Co. v. Tottenham L. B.*, *ante*, p. 4365. A district council *must* appoint a surveyor (L. G. A., 1933, s. 107, *ante*, p. 884). See also the definition of "surveyor" in s. 4, *ante*, p. 4334.

145. The inhabitants within any urban district shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district: Provided that any person who in any place after the passing of this Act ceases under or by virtue of any provision of this Act, or of any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district.

This section would appear to be now largely spent. Until rural district councils succeeded to the powers and duties of highway authorities under the L. G. A., 1894, s. 25, *post*, p. 4905, certain areas outside some urban districts were treated as forming part of such district for highway purposes.

There may be cases in which it is reasonable that ratepayers in an urban district should bear the whole or part of the expense of making or repairing a road in another district, as for example a road which provides a nearer way to a distant town, etc., or is principally required or used as an approach to the authority's cemetery or hospital. The Highways and Bridges Act, 1891, *post*, p. 4833, provides for agreements in such circumstances.

146. Any urban authority may agree (a) with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly (b) become on completion (c) highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads (d).

In rural districts and in relation to "county roads" in urban districts this section is applied to county councils with the deletion of the words "with the consent of two-thirds of their number" (Sched. I., Pts. I. and III., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975, 977).

Functions under this section are no longer exercisable by rural district councils (L. G. A., 1929, s. 30 (3), Vol. V. and 10 Halsbury's Statutes 904) except in the case of delegation by the county council under s. 35, Vol. V. and 10 Halsbury's Statutes 910, and in that event the section will apply in its amended form, for the rural district council will only be acting as "agents" for the county council and must act in accordance with the terms of the delegation. Councils of urban districts with a population not exceeding 20,000 are in respect to "county roads" in their district in exactly the same position as rural district councils. Councils of urban districts of a greater population than 20,000 may in relation to "county roads" "claimed" by them under s. 32, Vol. V. and 10 Halsbury's Statutes 906, function under this section as if the county road were an ordinary road vested in them.

In relation to all roads in their district other than "county roads" the powers of an urban district council under this section remain unchanged and the amendment above referred to is not operative.

(a) This agreement should be in writing and under seal: cf. *Hoare v. Kingsbury U. D. C.*, in notes to s. 154, *post*, p. 4425, and *Tunbridge Wells Improvement Commissioners v. Southborough L. B.*, in notes to s. 148, *post*, p. 4370; but see *Bromley L. B. v. Lansbury*, in note (c), *infra*. The section is incorporated from Local Government Act, 1888, s. 39.

The section seems designed to meet the case of the construction of new roads, not the making up of existing roads, though the decision in *Bromley L. B. v. Lansbury, infra*, has a contrary tendency, and the M. of H. have held that the section is applicable to the case of a district council making a new road upon the site of a private street.

If the street will upon completion become a county road (i.e., in an urban district a classified road) the agreement must, it would seem, be made by the county council or the district council acting as their agents, although the M. of T. will not classify the road until it is made. In the same way an urban district council entitled to claim county roads who have, in fact, claimed all county roads might, it would seem, make the agreement under this section although they cannot claim the road until it is in existence. On the other hand, as the county council would be under the obligation of bearing the expense of maintaining the road even if "claimed," it might be argued that the road was not a "claimed" road and therefore a county road in respect of which the agreement must be made by the county council.

(b) That is, in accordance with the agreement.

(c) See *Saunders v. Brading Harbour Improvement Railway and Works Co.* (1885), 52 L. T. 426; 42 Digest 524, 883, cited at length in the notes to s. 152, *post*, p. 4423.

In *Bromley L. B. v. Lansbury* (1894), Times, Dec. 5th, a new road was laid out in 1878; in 1884, buildings having been erected on each side of it, an arrangement, not under seal, was made between defendant, one of the frontagers, and the plaintiffs, that it should be made up to the satisfaction of the plaintiffs' surveyor, and should be kept in repair by the frontagers for six months, and that the plaintiffs should then adopt it. This arrangement was carried out, but the plaintiffs did not, after the expiration of six months, give the usual notice of adoption under s. 152, *post*, p. 4423. Subsequently, in consequence of heavy traffic, the road fell into disrepair, and the plaintiffs having paved it under s. 150, *post*, p. 4388, sought to recover a share of the expense from the defendant in the county court. It was held there, and on appeal by GRANTHAM and LAWRENCE, JJ., that the plaintiffs were bound by the arrangement come to in 1884, having accepted the work then done by defendant.

By an agreement made in 1879 between owners of property and a local authority, it was agreed that a road should be dedicated to the public and accepted by the authority as a highway repairable by the inhabitants at large, subject, nevertheless, to the authority retaining the power of calling upon the frontagers for the time being to make up such parts of it as were not already properly made up, and reserving to the authority all the powers under s. 150, *post*, p. 4388. The roadway was properly made up at the date of the agreement, but the footway was not paved. At a later date the authority, who had by that time adopted the Private Street Works Act, 1892, *post*, p. 4848, proposed to pave the footway under that Act and to charge the expenses against the frontagers. Upon objections to the provisional apportionment by frontagers who had bought from the original owners, it was held that the powers sought to be enforced did not apply to a highway repairable by the inhabitants at large, and that, the road having been accepted as such, the parties to the agreement

Note to
Section 146.

could not thereby give jurisdiction to proceed under the Act (*Mayor, etc. of Folkestone v. Marsh* (1906), 70 J. P. 113; 94 L. T. 511; 26 Digest 544, 2420). In a later case arising out of the same agreement, the authority sued a frontager for apportioned expenses. The frontager had taken no objection to the provisional or final apportionments under ss. 7 and 12 of the Act, *post*, pp. 4853, 4861. *Marsh's Case, supra*, was apparently not cited; and it was held that if the meaning of the agreement was that the roads were, as between the parties, to be deemed highways repairable by the inhabitants at large, and that—by implication—the corporation undertook not to put into force the Private Street Works Act, 1892 against the frontagers, it was *ultra vires*. If the deed had no such meaning, it was no bar under the circumstances of the case to proceedings under s. 14 of that Act, *post*, p. 4864 (*Mayor, etc. of Folkestone v. Rook* (1907), 71 J. P. 550; 6 L. G. R. 69; 26 Digest 540, 2388).

(d) It will be noted that the first agreement mentioned in the section may be made by the authority, *i.e.*, by a mere majority. But the latter agreement requires the consent of two-thirds of the members. The object is obviously to prevent jobbery in the matter. The provision requiring a two-thirds consent does not, however, apply in the application of the section to county councils and a district council to whom functions under this section have been delegated under s. 32, L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 906, do not in reference to a delegated road require the two-thirds consent though, of course, their powers are limited by the terms of the delegation. The L. G. B. held that s. 146, *supra*, did not enable a district council to contribute towards the cost of putting a private street (*i.e.*, an existing street) in repair. Contributions are, however, now provided for by s. 15 of the Private Street Works Act, 1892, *post*, p. 4865, where a street is made up under that Act, and by s. 81 of the P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1152, where the procedure under s. 150, *post*, p. 4388, is adopted.

Power
of urban
authority to
construct or
adopt public
bridges, etc.
over or under
canals, etc.

147. Any urban authority may agree (a) with the proprietors of any canal railway or tramway to adopt and maintain any existing or projected bridge viaduct or arch within their district, over or under any such canal railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge viaduct or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district; or such authority may themselves agree to construct any such bridge viaduct or arch at the expense of such proprietors (b); they may also, with the consent of two-thirds of their number (c), agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge viaduct or arch (d), or of the purchase of any adjoining lands required for the foundation and support thereof or for the approaches thereto.

In rural districts and in relation to "county roads" in urban districts this section is applied to county councils with the deletion of the words "with the consent of two-thirds of their number." (Sched. I., Pts. I. & III., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975, 977.)

As to the effect of this application, see the note to the last section.

See also the Highways and Bridges Act, 1891, s. 3, *post*, p. 4833, which enables a local authority to agree with any other local authority or county council for the construction, re-construction, alteration, or improvement, or the freeing from tolls of any main road, or other highway, or of any bridge within the jurisdiction of any of the parties; and the Bridges Act, 1929, Vol. V. and 9 Halsbury's Statutes 268, which enables highway authorities and the owners of bridges (including railway bridges) to make agreements with respect to the maintenance, improvement, reconstruction and transfer of such bridges and the roads carried thereby, and empowers the M. of T. in the absence of such agreements to make orders for the same purposes.

(a) The agreement should be under seal, see note (a) to preceding section. This section is re-enacted from Local Government Act, 1858, s. 40. It is not easy to see

how the authority can adopt a *projected* bridge ; but doubtless it means that if the projected bridge be made, the authority may adopt it afterwards. The observations made under note (a) to the last section as to *projected* streets would seem to be equally applicable to the case of projected bridges. It is, however, probable that in the future the provisions of the Bridges Act, 1929, Vol. V. and 9 Halsbury's Statutes 268, will in practice supersede this section. An agreement should be a permanent one, not one for a limited time.

(b) As to the liability of a railway company to construct bridges, see the Railways Clauses Consolidation Act, 1845, ss. 46 *et seq.* (14 Halsbury's Statutes 47 *et seq.*) ; *R. v. S. E. Rail. Co.* (1853), 4 H. L. Cas. 471 ; 38 Digest 266, 85 ; *Dartford R. D. C. v. Bexley Heath Rail. Co.*, [1898] A. C. 210 ; 62 J. P. 227 ; 38 Digest 266, 83. For decisions as to the obligations of railway and canal companies to maintain, widen, raise or strengthen bridges (with their roadways, approaches and fences) and level crossings, see note (d) to the next section.

(c) Note the same difference as in the last section, note (d), with reference to the entering into these agreements, and observe that the two-third's consent is not necessary in the case of a county council or a district council acting as agents for the county council in pursuance of a delegation of functions under s. 32, L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 906.

(d) The bridge, viaduct, or arch must be one which will be part of a public street or road repairable by the inhabitants at large. Where a district council proposed to make a contribution to a railway company towards the cost of erecting a bridge which the company reserved power to close for one day in each year, or to remove without payment of any compensation to the council, the M. of H. held that such an agreement was not authorised by the section, and declined to sanction a loan.

The M. of H. regard a proposed subway beneath a railway as within this section, but the public right of way must be permanent.

148. Any urban authority may by agreement (a) with the trustees of any turnpike road (b), or with any person liable (c) to repair any street (d) or road, or any part thereof, or with the surveyor of any county bridge (e), take on themselves the maintenance repair cleansing or watering of any such street or road or any part thereof (f), or of any road over any county bridge, and the approaches thereto (e), or of any part of the said streets or roads within their district and may remove any turnpike gates, toll gates, or bars which may be situated within their district, and may erect other turnpike gates, toll gates, or bars in lieu thereof, on such terms as the urban authority and such trustees or person or surveyor as aforesaid may agree on :

Power of urban authority to enter into agreements with persons liable to repair streets as to repair, etc. thereof

Provided—

That where any mortgage debt is charged on the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two thirds in value of the mortgagees ; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act in the same manner as other charges on any such fund or rate are authorised by this Act.

Any executors, administrators, guardians, trustees, or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof ;

Section 148. *and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.*

The italicised portions of this section were repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173), turnpike trusts being now obsolete.

In rural districts this section is applied to county councils with the omission of the words "or with the surveyor of any county bridge," "or of any road over any county bridge and the approaches thereto" and "or surveyor" (Sched. I., Pt. I., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975).

A rural district council can, therefore, no longer exercise any functions under this section except as agents for the county council in pursuance of a delegation under s. 35 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 910. In exercising such delegated functions the section will apply to rural district councils in its amended form subject, of course, to any restrictions or conditions imposed by the terms of the delegation.

The section is *not* applied to county councils in relation to "county roads" in urban districts, and the section will continue to apply to urban district councils, as it did prior to the passing of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883.

As to toll bridges and roads, see s. 53, Road Traffic Act, 1930.

(a) The agreement should be under seal (*Turnbridge Wells Improvement Commissioners v. Southborough L. B.* (1888), 60 L. T. 172; 13 Digest 385, 1129). In that case the plaintiffs had covenanted with an individual to construct and maintain a road (along which he was giving them a right of way) in the district of the defendants. The plaintiffs and defendants subsequently agreed that in consideration of the former assenting to a transfer of area—subsequently sanctioned by Parliament—the latter would "adopt" the road and "dedicate" it as a public highway:—*Held*, that (apart from the want of seal) the agreement was not authorised by the words of this section.

As to how far an agreement made under this section with respect to the repair of the roadway on a railway bridge continues in force when a tramway company have widened the bridge under special statutory powers, see *Teddington U. D. C. v. L. & S. W. Rail. Co.* (1910), 74 J. P. 119; 102 L. T. 328; 26 Digest 576, 2679.

(b) An agreement as to turnpike roads made before December 31st, 1870, under the corresponding section of the Act of 1858, *ante*, p. 4249, was held not to prevent the roads from being still turnpike roads on December 31st, 1870, within the meaning of the Highways and Locomotives (Amendment) Act, 1878, s. 13 (9 Halsbury's Statutes 172) (*West Riding J.J. v. R.* (1883), 8 App. Cas. 781; 48 J. P. 228; 26 Digest 266, 69).

Turnpike trusts, after the commencement of this Act, continued in force as to turnpike roads within an urban sanitary district (*per* Lord BLACKBURN in *Lancashire J.J. v. Rochdale (Mayor of)* (1883), 8 App. Cas. 497; 48 J. P. 20; 26 Digest 266, 68). In that case the corporation of R. was the highway authority within the borough. Under ss. 47—50 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 546, 547), the obligation to repair all public highways within the town was imposed upon the corporation, and the turnpike trustees were forbidden to lay out any money on any road within that area. By a local Act in 1872 the boundaries of the borough were enlarged, and all the provisions of the Act relating to the town were extended to the enlarged area. The effect was that further portions of turnpike roads were for the first time brought within the borough and within the operation of ss. 47—50. It was held that these further portions, being only parts of turnpike roads, had not "ceased to be turnpike roads," and were not to be deemed to be "main roads" within s. 13 of the Highways and Locomotives (Amendment) Act, 1878 (9 Halsbury's Statutes 172); and that the county authority were not liable to pay half the expenses of their maintenance.

By a local Act of 1855, incorporating the Towns Improvement Clauses Act, 1847, *ante*, p. 4200 and 13 Halsbury's Statutes 531, the maintenance of all highways within a district, including a turnpike road, became vested in the commissioners. The trustees of the turnpike road thereupon ceased to repair it within the limits of the district. The turnpike trust expired in 1877. The commissioners were the highway authority for the district, which was a highway area within the Highways and Locomotives (Amendment) Act, 1878, s. 13. It was held that, notwithstanding the special legislation in 1855, providing for the maintenance of part of the road by the

Agreements
as to turn-
pike roads.

commissioners, it only ceased to be a turnpike road within the meaning of s. 13, on the expiration of the turnpike trust in 1877, and must therefore be deemed to be a main road, and that consequently one-half of the expenses of the maintenance of the part within the highway area should be paid to the highway authority by the county authority (*Newton-in-Makerfield Improvement Commissioners v. Lancashire J.J.* (1884), 15 Q. B. D. 25; 49 J. P. 149).

(c) This section enables an authority to agree with a person who is liable *ratione tenuræ* to repair some highway that, in consideration of a money payment, the authority shall take over in perpetuity the liability for such repair; such an agreement effectually discharges the land from the liability (*In re Earl of Stamford and Warrington, Payne v. Grey*, [1911] 1 Ch. 648; 75 J. P. 346; 26 Digest 371, 970). The Highway Act, 1835, s. 62 (9 Halsbury's Statutes 79), and the Highway Act, 1862, s. 35 (*op. cit.* 134), provided a procedure by which highways repairable *ratione tenuræ* in separate highway parishes and in highway districts respectively could become parish highways. That procedure, however, contains restrictions which are sometimes inconvenient, *e.g.*, in the matter of the application of the compensation money, and in such cases it may be found desirable to proceed under this section. In the case of a settled estate a liability to repair *ratione tenuræ* is not an "incumbrance" to the redemption of which capital moneys may be applied (*In re Hodgson's Settled Estate*, [1912] 1 Ch. 784; 40 Digest 751, 2808).

(d) A bridge which is not a "county bridge" (as to which see note (e), *infra*) is a "street" as defined by s. 4, *ante*, p. 4336. See also the Bridges Act, 1929, Vol. V. and 9 Halsbury's Statutes 268, as to agreements and the power of the Minister of Transport to make orders in relation to the maintenance, improvement, reconstruction and transfer of bridges.

Where, in order to fulfil their obligation under the Railways Clauses Consolidation Act, 1845, s. 46 (14 Halsbury's Statutes 47) (see s. 147, note (b), *ante*, p. 4369), a railway company make a bridge to carry a highway over the railway, they are bound to keep the surface of the highway on the bridge and its approaches in repair as being a necessary part of the bridge (*L. & Y. Rail Co. v. Bury (Mayor, etc. of)* (1889), 14 App. Cas. 417; 54 J. P. 197; 26 Digest 586, 2776; *Caledonian Rail. Co. v. Glasgow Corporation*, [1909] A. C. 138; 38 Digest 272, 128). And see *Buckley v. L. & N. W. Rail. Co.* (1896), Times, June 12th. But this liability does not extend to a bridge over the railway which was not strictly made under s. 46 (*L. & N. W. Rail. Co. v. Ogwen R. D. C.* (1899), 63 J. P. 295; 80 L. T. 401; 38 Digest 272, 127); nor does it extend to a bridge made to carry an occupation road which has since become a highway (*Caledonian Rail. Co. v. Glasgow Corporation, supra*). It has been held that when, to comply with s. 46, the railway is carried over a highway the company are not bound to repair the highway under the bridge, even though it has been lowered in order to give headway (*L. & N. W. Rail. Co. v. Skerton* (1864), 5 B. & S. 559; 28 J. P. 518; 38 Digest 270, 112); but the correctness of this decision has been doubted (*Hertfordshire C. C. v. G. E. Rail. Co.*, [1909] 1 K. B. 368; 73 J. P. 84; [1909] 2 K. B. 403; 73 J. P. 353; 38 Digest 308, 325).

As to a railway company's liability to repair the roadway on a bridge and its approaches when such bridge was made under a special Act prior in date to the Railways Clauses Consolidation Act, 1845 (14 Halsbury's Statutes 30), see *Att.-Gen. v. Midland Rail. Co.* (1909), 73 J. P. 337; 100 L. T. 866; 38 Digest 272, 126, and *L. & N. E. Rail. Co. v. North Riding of Yorkshire C. C.*, [1936] A. C. 365; [1936] 1 All E. R. 692; Digest Supp.

As to their liability where a bridge originally built by them has been widened by a tramway company under special statutory powers, see *Teddington U. D. C. v. L. & S. W. Rail. Co.* (1910), 74 J. P. 119; 102 L. T. 328; 38 Digest 273, 130; and as to their liability in some cases to widen a bridge in accordance with the Railways Clauses Acts, see *Rhondda U. D. C. v. Taff Vale Rail. Co.*, [1909] A. C. 253; 73 J. P. 257; 38 Digest 271, 115.

A railway company were authorised to cross a highway by means of a level crossing; and, the line being at a higher level than the road, they constructed permanent slopes in order to bring the road gradually to the level of the line, and so cross it. It was held that they were under no obligation to keep in repair the surface of these graded approaches (*West Lancashire R. D. C. v. L. & Y. Rail. Co.*, [1903] 2 K. B. 394; 67 J. P. 410; 38 Digest 280, 178). In a later case, however, under exactly

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Agreement
with persons
liable *ratione
tenuræ*.

Obligations
of railway
and canal
companies in
respect of
bridges, their
roadways,
approaches,
etc., and
level
crossings.

**Note to
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similar circumstances, except that the company's special Act was prior in date to the Railways Clauses Consolidation Act, 1845, the company was held liable, and the correctness of the earlier decision was questioned (*Hertfordshire C. C. v. G. E. Rail. Co.*, [1909] 1 K. B. 368; 73 J. P. 84; [1909] 2 K. B. 403; 73 J. P. 353; 38 Digest 308, 325).

As to the liability of a canal company under a Canal Act to repair both the fabric of a bridge carrying a road over their canal and also the roadway on such bridge, see *Macclesfield Corporation v. G. C. Rail. Co.*, [1911] 2 K. B. 528; 75 J. P. 369; 26 Digest 581, 2713; as to their liability to repair the approaches to such a bridge, see *Nottingham C. C. v. M. S. & L. Rail. Co.* (1894), 71 L. T. 430; 26 Digest 586, 2773, and *Att.-Gen. v. Oxford Canal Navigation*, *infra*. A statute passed after the Statute of Bridges, 1530-1 (9 Halsbury's Statutes 229) empowered a company to make a cut across a highway, and imposed upon them the obligation of making and maintaining at their own cost a bridge to carry the highway across the cut. It was held that the company was only liable to maintain the bridge and its actual approaches with the roadway thereon, the extent of the approaches being a question of fact; and that their liability did not necessarily extend to a distance of 300 feet from each end of the bridge. The court held that the rule as to 300 feet laid down by the Statute of Bridges, applies to bridges repairable by the county or by prescription, but not to cases where the liability is directly imposed by a later Act (*Herts C. C. v. New River Co.*, [1904] 2 Ch. 513; 68 J. P. 552; 26 Digest 585, 2765). An appeal in this case was dismissed by consent, on July 2nd, 1906. See also an earlier case on the same point, *R. v. Staffordshire and Worcestershire Canal Co.* (1901), 65 J. P. 505.

By a private Act the defendants were not to be liable "to repair or amend any part of the roads approaching to any bridge or bridges made, or to be made, over the said canal . . . beyond or further than the extremity of the wing-wall" of the bridges, but nothing therein contained was to exonerate them from repairing the bridges and the "wing-walls, ramparts, and side-banks thereof":—*Held*, that the liability of the defendants to repair was limited to the bridges, and included nothing else; and that they were, therefore, not liable to repair fences by the side of approaches to bridges over their canal (*Att.-Gen. v. Oxford Canal Navigation* (1903), 67 J. P. 130; 72 L. J. Ch. 285; 26 Digest 374, 999).

A railway company were liable under their special Act to maintain a bridge over a canal at a special height above the towing-path. Subsidence having taken place from causes beyond the control of the company, it was held that it was their duty to raise the bridge to its original height above the path (*Rhymney Rail. Co. and Others v. Glamorgan Canal Navigation Co.* (1904), 91 L. T. 113; 20 T. L. R. 593; 38 Digest 275, 143). In another case of subsidence, *North Staffordshire Rail. Co. v. Hanley Corporation* (1909), 73 J. P. 477; 26 T. L. R. 20; 38 Digest 407, 978, it was held that when a bridge over a canal becomes so ruinous that reconstruction is necessary, there is no obligation upon the person who has to reconstruct to do so at such a height as to avoid causing a nuisance to users of the canal. This case was discussed and explained in *G. W. R. v. Monmouthshire C. C.* (1929), 94 J. P. 6; 27 L. G. R. 569; Digest Supp., in which it was held that a covenant "to maintain" a bridge over a canal under a contract does not entail an obligation to raise it so as to avoid interference with traffic on the canal when its level has been brought down in consequence of a subsidence. In that case, unlike the *Hanley Case*, the bridge was not in such a condition as to require reconstruction.

For a case in which a canal company, liable to repair a bridge carrying a highway, were held to be only liable to keep the bridge in repair in the condition in which it was made in accordance with the requirements of the Commissioners as originally provided in a private Act of 1791, see *Sharpness New Docks, etc. Co. v. Att.-Gen.*, [1915] A. C. 654; 79 J. P. 305; 26 Digest 581, 2716. The decision in this case was followed and applied in the case of a railway bridge in *Att.-Gen. v. G. N. Rail. Co.*, [1916] 2 A. C. 356; 80 J. P. 337; 26 Digest 582, 2719. In that case it was held that where a public highway is carried over a railway constructed under the provisions of s. 46 of the Railway Clauses Consolidation Act, 1845 (14 Halsbury's Statutes 47) the railway company is liable to maintain the bridge in the condition as to strength in relation to traffic in which it was at the date of completion, and is not liable to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which may reasonably be expected to pass over it according to the standard of the present day. These decisions were also followed in *Att.-Gen. for*

Ireland v. Lagan Navigation Co., [1924] A. C. 877; 88 J. P. 162; 26 Digest 582, 2717. In that case a provision in a local Act required the company to maintain and keep all bridges made or constructed by them "in good and substantial and serviceable repair, and in an efficient state for all the purposes thereof and of the traffic on the same." It was held that this provision imposed an obligation only to maintain a bridge in a fit state for the ordinary traffic at the date of the passing of the Act.

All these decisions were considered and applied in *Manchester Corporation v. Audenshaw U. D. C. and Denton U. D. C.*, [1928] Ch. 763; 92 J. P. 163; Digest Supp. In that case the plaintiff corporation had under a local Act constructed a road which was "at all times thereafter to be maintained" at the expense of the corporation. The Court of Appeal held that the corporation were liable to maintain the road in the state in which it was at the date of its completion in 1878, and that that liability continued notwithstanding the change in the nature and volume of the traffic upon the road.

In *Swan v. Southern Rail. Co.*, [1939] 2 K. B. 560; [1939] 2 All E. R. 794; Digest Supp., where a passenger was injured owing to the defective state of the road on and the approaches to a bridge over a railway which the railway company had constructed in accordance with the Railways Clauses Consolidation Act, 1845, s. 46 (14 Halsbury's Statutes 47), it was held (1) that the company had not the exemption of the surveyor of highways at common law and were liable in damages although the injury had resulted from nonfeasance only; (2) that the statutory duty of maintaining the bridge did not make the railway company a public authority within the meaning of the Public Authorities Protection Act, 1893, *post*, p. 4875; and (3) that the duty of the defendants in respect of the bridge and approaches was to maintain them in a condition suited to such traffic as existed when the road was made in 1856. See also *Guilfoyle v. Port of London Authority*, [1932] 1 K. B. 336; 95 J. P. 217; Digest Supp.

Reference may be made to *In re Woking U. D. C. (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. 300; 78 J. P. 81; 40 Digest 305, 2620, for a decision as to liability under a local Act in respect of bridges across an abandoned canal. And see also *Att.-Gen. v. N. E. Rail. Co.*, [1915] 1 Ch. 905; 79 J. P. 500; 38 Digest 306, 316. In that case a swing bridge had to be provided by a Navigation Co. and on the merger of the navigation company with a railway company it was proposed to construct a fixed bridge instead of a swing bridge. It was held that as the swing bridge was clearly for the benefit of the public an injunction would be granted to restrain the alteration.

As to when a bridge has been "taken over" by a local authority so as to relieve an estate owner of liability to repair a bridge under a contract with the canal company over whose canal the bridge had been carried, see *Regent's Canal & Docks Co. v. Gibbons*, [1925] 1 K. B. 81; 89 J. P. 4; 26 Digest 579, 2696. When a road over a bridge is declared a highway repairable under s. 152, *post*, p. 4423, the bridge vests in the highway authority unless they can enforce the liability to repair against some one else (*Att.-Gen. v. Hornsey B. C.*, [1927] 1 Ch. 331; 91 J. P. 61; Digest Supp.).

The provisions of this section might apply to the towing-path of a canal. Such Towing a towing-path may be dedicated as a highway (*Grand Junction Canal Co. v. Petty paths*, (1888), 21 Q. B. D. 273; 53 J. P. 692; 26 Digest 290, 226). The question to be determined when a dedication by a statutory body is alleged is: "Would a dedication of the land have been inconsistent with the enjoyment by the statutory body of the land for the purposes of their undertaking?" This question has been considered in the following cases: *North London Rail. Co. v. St. Mary, Islington (Vestry)* (1872), 37 J. P. 341; 27 L. T. 672; 26 Digest 276, 138, and *Taff Vale Rail. Co. v. Pontypridd U. D. C.* (1905), 69 J. P. 351; 93 L. T. 126; 26 Digest 291, 228 (bridges over railways); *Stretford U. D. C. v. Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 19 T. L. R. 546; 38 Digest 251, 14 (railway property); *Att.-Gen. v. L. & S. W. Rail. Co.* (1905), 69 J. P. 110; 21 T. L. R. 220; 26 Digest 292, 239; *Arnold v. Morgan*, [1911] 2 K. B. 314; 75 J. P. 105; 26 Digest 291, 231; *Holloway v. Egham U. D. C.* (1908), 72 J. P. 433; 6 L. G. R. 929; 26 Digest 302, 343; *Edinburgh Magistrates v. N. B. Rail. Co.* (1904), 6 F. (Ct. of Sess.) 620, and *G. C. Rail. Co. v. Balby-with-Heathorpe U. D. C.*, [1912] 2 Ch. 110; 76 J. P. 205; 26 Digest 292, 240 (paths along or across railway lines or sidings); *S. E. Rail. Co. v. Warr* (1923), 21 L. G. R. 669; 26 Digest 291, 232, and *S. E. Rail. Co. v. Cooper*, [1924] 1 Ch. 211; 88 J. P. 37; 19 Digest 108, 687 (level crossings); *G. W. Rail. Co. v. Solihull R. D. C.*

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(1902), 66 J. P. 772; 86 L. T. 852; 26 Digest 290, 227, and *L. & Y. Rail. Co. v. Davenport* (1906), 70 J. P. 129; 26 Digest 291, 229 (reservoir embankment); *R. v. Leake* (1833), 5 B. & Ad. 469; 26 Digest 290, 225 (a fen embankment); *Grand Surrey Canal Co. v. Hall* (1840), 1 Man. & G. 392; 26 Digest 287, 203 (canal bridge); *Greenwich Board of Works v. Maudslay* (1870), L. R. 5 Q. B. 397; 35 J. P. 8; 26 Digest 292, 236 (sea wall); *Tyne Improvement Commissioners v. Inrie* (1899), 81 L. T. 174; 26 Digest 261, 9 (pier); *Arnott v. Whithy U. D. C.* (1909), 73 J. P. 369; 101 L. T. 14; 26 Digest 334, 654 (quay); *Coats v. Hertfordshire C. C.*, [1909] 2 Ch. 579; 73 J. P. 355; 26 Digest 291, 230 (disused tramways); *Paterson v. St. Andrew's Magistrates* (1881), 6 App. Cas. 833; 26 Digest 292, 241 (road over public golf links); *Att.-Gen. v. Hemingway* (1916), 81 J. P. 112; 15 L. G. R. 161; 26 Digest 301, 316 (path along edge of cliffs to disused harbour); *Thames Conservators v. Kent*, [1918] 2 K. B. 272; 83 J. P. 85; 44 Digest 114, 914 (towing path of river); *Reigate Corporation v. Surrey County Council*, [1928] Ch. 359; 92 J. P. 46; Digest Supp. (walls and roof of tunnel through which road ran); *Boulwood v. Paignton U. D. C.* (1928), 92 J. P. 98; Digest Supp. (footpath along sea cliff); *Hue v. Whiteley*, [1929] 1 Ch. 440; 140 L. T. 531; Digest Supp. (paths joining existing highways); *Williams-Ellis v. Cobb*, [1935] 1 K. B. 310; 99 J. P. 93; Digest Supp. (road leading to sea); and cf. *Att.-Gen. v. G. N. Rail. Co.*, on p. 4372, *ante*.

"County
bridges" and
the roadways
thereof.

(e) A bridge may be a "county bridge," whether it be repairable by the inhabitants of the county or by an individual (*R. v. Chart and Longbridge* (1870), L. R. 1 C. C. R. 237; 34 J. P. 454; 26 Digest 571, 2631). In general, however, a county bridge is repairable by the inhabitants of the county. Where a bridge carrying a public highway was built prior to the Bridges Act, 1803 (9 Halsbury's Statutes 255), the county council can only avoid their common law liability to repair it by pleading and proving that the liability to repair is upon some other person (*Att.-Gen. v. West Riding of Yorks C. C.* (1903), 67 J. P. 173; 19 T. L. R. 192; 26 Digest 572, 2638; *R. v. Norfolk C. C.* (1910), 26 T. L. R. 269; 26 Digest 304, 352; *R. v. Berks C. C.* (1901), Times, June 24th). By the Highway Act, 1835, s. 21 (9 Halsbury's Statutes 58), "if any bridge shall hereafter be built which bridge shall be liable by law to be repaired by and at the expense of any country or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless that nothing herein contained shall extend to, or be construed to extend to, exonerate or discharge any county or any part of any county from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge or the land arches thereof." In the case of a bridge repairable by the county but built before the passing of that Act, the roadway over it and the approaches for a distance of 300 feet from each end of such bridge, are repairable by the county. See Statute of Bridges, 1530-1, s. 7 (9 Halsbury's Statutes 232). Where for any reason a bridge in a highway repairable by the inhabitants at large is not considered a county bridge, and no other persons are by usage, prescription, or statute bound to repair it, it is repairable as part of the highway by the inhabitants of the parish. By Annual Turnpike Acts Continuance Act, 1870, s. 12 (*op. cit.* 282), "where a turnpike road shall have become an ordinary highway all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly: Provided that for the purposes of this Act such bridges shall be treated as if they were bridges built subsequently to the passing of the Highway Act, 1835." This section was discussed in *R. v. Dorset (Inhabitants of)* (1881), 45 L. T. 308; 26 Digest 574, 2660. There a toll bridge was built over a river to connect the back streets of W. with the country districts on the other side. A turnpike road was made in connection with the bridge, both bridge and road being constructed under one Act. There were separate trusts of the bridge and the road, but the trustees of the one were trustees of the other. The bridge was within the borough of W. On the expiration of the trusts the county of D., in which the bridge was situated, repaired the road, but the bridge fell into disrepair. The county was thereupon indicted for its non-repair and was found guilty:—*Held*, that the county was rightly convicted, for, as there was nothing in the case to cast the liability to repair on the borough, it became on the expiration of the trust a county bridge

repairable by the inhabitants of the county. See, for other decisions on the section, *R. v. Somerset* (1878), 42 J. P. 501; 38 L. T. 452; 26 Digest 574, 2658; *R. v. Buckingham County* (1878), 43 J. P. 175; 26 Digest 574, 2659. Note to Section 148.

The functions of a county council with respect to the maintenance, repair and improvement of and other dealings with "county bridges" (as defined by s. 134 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 971), in any district, may be delegated by the county council to the council of that district under s. 35, Vol. V. and 10 Halsbury's Statutes 910.

(f) In *Nutter v. Accrington L. B.* (1878), 4 Q. B. D. 375; 43 J. P. 635; 26 Digest 335, 660, MELLOR, J., thought that these words did not authorise the division of the "Part of a road into longitudinal sections, so that the local board should undertake the charge street." of the footpath, and the turnpike trustees that of the roadway. But COTTON, L.J., thought otherwise.

Regulation of Streets (a) and Buildings.

149. All streets (b), being or which at any time become highways repairable by the inhabitants at large (c) within any urban district (d), and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority (e). Vesting of streets, etc. in urban authority.

The urban authority shall (f) from time to time cause all such streets to be levelled paved metalled flagged channelled altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised lowered or altered as they think fit (g), and may place and keep in repair fences and posts for the safety of foot passengers (h).

Any person who without the consent of the urban authority wilfully displaces or takes up (i) or who injures the pavement stones materials fences or posts of or the trees (k) in any such street shall be liable to a penalty (l) not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement stones or other materials so displaced taken up or injured; he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the court may award.

It is the duty of every urban authority to make a list of all the streets in their district repairable by the inhabitants at large and allow any person to inspect this list without payment (s. 84, P. H. A., 1925; 13 Halsbury's Statutes 1153).

(a) Part II. of the P. H. A., 1907, *post*, p. 5042, contains several important provisions relating to highways repairable by the inhabitants at large, but they will only be operative when applied to any district by an Order of the M. of H. The provisions in question (for the full text of which see the Act, *post*, p. 5042), deal with the following subject-matters: Provisions of the P. H. A., 1907.

Crossing for cattle, etc. over footways (s. 18, *post*, p. 5044);
 Damages to footways by excavations (s. 20, *post*, p. 5047);
 Deposit of building materials or excavations (s. 29, *post*, p. 5049);
 Dangerous places to be repaired or enclosed (s. 30, *post*, p. 5050);
 Fencing lands adjoining streets (s. 31, *post*, p. 5051);
 Hoards to be securely erected (s. 32, *post*, p. 5052);
 Exemption of buildings of railway company and others (s. 33, *post*, p. 5053);
 Reference should also be made to s. 22, *post*, p. 5048 (buildings at corner of streets), and s. 57 of the P. H. A., 1936, *ante*, p. 180 (entrances to certain courts not to be closed or narrowed).

Further provisions in respect of streets are to be found in the Public Health Act, 1925, Pts. II. and VIII., the Roads Improvement Act, 1925, and the Road Traffic Act, 1930, Pt. III., all of which are set out, Vol. V., *post*.

**Note to
Section 149.**

Other
statutory
provisions as
to streets.

The Tramways Act, 1870 (*ante*, p. 4272), contains provisions whereby a district council may be enabled to construct and maintain a tramway within their district. Their consent is also necessary to enable other persons to obtain a Provisional Order under the Act, unless such consent is dispensed with by the Board of Trade. The Act also contains important provisions as to the right of a tramway company to interfere with roads, sewers, etc., for the purchase of the undertaking by the local authority, etc.

See also (*ante*, p. 4264), the Gas and Water Works Facilities Acts, 1870 and 1873, as to the necessity for the consent of the local authority for a Provisional Order under these Acts, and the Electric Lighting Acts, 1882, 1888 and 1909, *post*, pp. 4642, 4700, 5096; the Electric Lighting (Clauses) Act, 1899, *post*, p. 4949, and the Electricity Supply Acts, 1919, 1922 and 1926, *post*, p. 5245 and Vol. V., *post*, as to interference with streets under those Acts.

For the statutory provisions as to the use of locomotives and motor cars on public roads, see the Locomotive Act, 1861 (19 Halsbury's Statutes 54); the Locomotives Act, 1865 (*op. cit.* 59); the Highways and Locomotives (Amendment) Act, 1878 (9 Halsbury's Statutes 166); the Locomotives on Highways Act, 1896 (19 Halsbury's Statutes 64); the Locomotives Act, 1898 (*op. cit.* 67); the Motor Car Act, 1903 (*op. cit.* 75); the Ministry of Transport Act, 1919, *post*, p. 5195, the Roads Act, 1920, and the Road Traffic Act, 1930, Vol. V., *post*. The Acts of 1865 and 1903, so far as not repealed, were made permanent by the Expiring Laws Act, 1922 (18 Halsbury's Statutes 1178).

(b) See the definition of *street* in s. 4, *ante*, p. 4336. See also the notes to s. 144, *ante*, p. 4350, and note (b) to the next section, *post*, p. 4390.

(c) For notes as to what are "highways repairable by the inhabitants at large," see notes to s. 25 of the Town and Country Planning Act, 1932, *ante*, pp. 1947-1951. And see further the next section, note (c), *post*, p. 4393.

Rural
districts.

(d) This section is not applied to county councils by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, and is, therefore, not applicable in rural districts. "County roads" in rural districts (*i.e.*, all highways repairable by the inhabitants at large) are, however, vested in the county council by s. 29 (2) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903.

Ownership
and statutory
"vesting"
of soil of
streets.

(e) The presumption is that any man in possession of a plot of land adjoining a highway is in possession of the soil of the highway *usque ad medium filum*. See the cases collected in *Mappin Brothers v. Liberty*, [1903] 1 Ch. 118; 67 J. P. 91; 26 Digest 322, 559 (where, however, the presumption was held to be rebutted), and *London City Land Tax Commissioners v. Central London Rail. Co.*, [1913] A. C. 364; 77 J. P. 289; 26 Digest 321, 540; *Maclaren v. Att.-Gen. for Quebec*, [1914] A. C. 258; 44 Digest 91, 719 *v.*

The words in s. 149, *shall vest in*, are future in signification, but as a similar provision was contained in previous Public Health Acts, the effect of the words in question was merely to continue the state of things which at the time of the passing of the Act existed in districts already constituted. But while the property mentioned in the section passed to the authority, it must be remembered that all outstanding liabilities also passed.

Under s. 29 (2) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, "county roads" other than "county roads" in urban districts of a population of more than 20,000 which have been claimed or are deemed to have been claimed by the district council under s. 32, Vol. V. and 10 Halsbury's Statutes 906, are vested in the county council. The "county roads" in urban districts consist of all classified roads and roads which were "main roads" and roads which in future become county roads.

As to the meaning of the words "vest in," see the following cases: In *Hinde v. Chorlton* (1866), L. R. 2 C. P., at p. 116, WILLES, J., referring to the words *vest in* in a local Act, said: "There is a whole series of authorities in which words which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out of the objects of the Act without giving them the freehold. In *Stracey v. Nelson* (1844), 12 M. & W. 535; 8 J. P. 677; 41 Digest 52, 381, it was provided by an Act that certain lands should be *vested in* the Commissioners of Sewers, and the court held,

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notwithstanding, that only the control over the land, and not the freehold, passed to them." This decision was followed in a recent case (*Nesbitt v. Mablethorpe U. D. C.*, [1918] 2 K. B. 1; 82 J. P. 161; 41 Digest 53, 383), and the case of *West Norfolk Farmers' Manure Co. v. Archdale* (1886), 16 Q. B. D. 754; 50 J. P. 500; 41 Digest 53, 382, was distinguished. The *Mablethorpe Case* was a decision as to the ownership of sandhills and as to the acquisition of title by possession by the exercise of acts of ownership thereon. In *Bagshaw v. Buxton L. B.* (1875), 1 Ch. D., at p. 222; 26 Digest 449, 1652, JESSEL, M.R., said that by the term *vested* he meant *vested sub modo*, as far as a highway can be, not necessarily giving to the local authority the right to the soil. The words *vest in* do not give the property in the street, but merely the property in the surface of the street, and in such part of the soil as is or can be used for the ordinary purposes of a street (*Coverdale v. Charlton* (1878), 3 Q. B. D. 376; 4 Q. B. D. 104; 43 J. P. 268; 26 Digest 329, 616). In that case, by an award made under an inclosure Act of 1766, two private roads, E. and H., were set out. About 1818 E. became a *public* highway. Down to 1863 the surveyor of highways for the parish had from time to time let the pasturage upon E. and H. to various persons. A local board was formed in 1863 for the parish, and the board in 1876 let the pasturage on E. and H. to the plaintiff. He thereupon commenced to depasture the herbage with his cattle. The defendant interfered with the plaintiff's enjoyment of the pasturage. It was held that the property in the soil of E., being a street, so far vested in the local board that they could demise the right of pasturage thereon to the plaintiff, who was entitled to maintain an action. It was held also that the local board having no power to demise H., being a *private* way, the plaintiff had not sufficient exclusive possession as occupier to enable him to maintain an action. In a subsequent case, JAMES, L.J., explained this decision as to the meaning of the words *vest in*, as follows: "What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on, and in respect of the soil, which would enable them as owners to bring a possessory action against trespassers. Now what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent in space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or stratum of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance, and occupation, and exclusive possession of the street, and the making and maintaining of the street for the use of the public" (*Rolls v. St. George-the-Martyr, Southwark (Vestry of)* (1880), 14 Ch. D. 785; 44 J. P. 680; 26 Digest 330, 627). See also *Stillwell v. New Windsor Corporation*, cited *ante*, p. 4336.

Where a street was carried across a railway in a cutting by a bridge erected under the Railways Clauses Consolidation Act, 1845, ss. 46—51 (14 Halsbury's Statutes 47—49), it was held that the statutory vesting of streets in the vestry did not give them any property in the bridge or its fences, but merely vested in them the carriage-way and footpaths and the materials of which these were made (*G. E. Rail. Co. v. Hackney Board of Works*, *ante*, p. 706). This case was distinguished in *Att.-Gen. v. Hornsey B. C.*, [1927] 1 Ch. 331; 91 J. P. 61; Digest Supp. In that case estate owners in developing an estate constructed streets which were carried over a river by bridges. The streets were subsequently made up and taken over by the local authority under s. 152, *post*. It was held that having regard to the definition of "street" in s. 4, *ante*, the local authority were liable under the section in the text to repair the fabric of the bridges as part of the streets. In the earlier case of *Regent's Canal & Docks Co. v. Gibbons*, [1925] 1 K. B. 81; 89 J. P. 4; 26 Digest 579, 2696, SWIFT, J., had held in similar circumstances that the estate owner was relieved of the liability to repair the bridge "until taken over by the local authority," but declined to determine the point as to whether there was a liability upon the local authority under this section. In *Sydney (Municipal Council of) v. Young*, [1898] A. C. 457; 26 Digest 329, 616 i, it was held that an authority's statutory property in a street did not entitle them to compensation when part of it was appropriated for the purpose of a street tramway. In *Foley's Charity Trustees v. Dudley*

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Corporation, [1910] 1 K. B. 317; 74 J. P. 41; 26 Digest 324, 581, it was held that an urban authority have a determinable statutory fee simple in such portion of the soil of a road as is vested in them at all, and the defendants were held liable as terre-tenants to pay a rent-charge created (as the court inferred) on the original acquisition of the site of the road by turnpike trustees. In *Hertfordshire County Council v. Lea Sand, Ltd.* (1933), 98 J. P. 109; 32 L. G. R. 279; Digest Supp., it was held that vesting of a public carriage road, built upon a raised viaduct resting upon open arches and descending to the ground level upon embankments, included (1) the whole masonry and structure of the viaduct together with such soil as it actually occupied; (2) the soil of the embankments; but not (3) the soil lying beneath and between the arches of the viaduct. It was further held that the authority was entitled to a right of access to the latter at all times for the purpose of inspection and maintenance, which right was not forfeited by laches or acquiescence on the part of the authority where it was necessary for the authority to perform its statutory duties.

In *Cavan C. C. and Bailieborough R. D. C. v. Kane*, [1910] 2 I. R. 644; [1913] 2 I. R. 250; 26 Digest 470, *t.*, it was held that the plaintiff councils suing together could recover as "special damage," in respect of a public nuisance, the cost of repairing a highway cut up by the defendant's traction engine. Cf. *Louth U. D. C. v. West*, cited on p. 4364, *ante*; *Kilkenny C. C. v. Hayden* (1911), 46 Ir. L. T. 95; *Donegal C. C. v. Robinson* (1914), 48 Ir. L. T. 182; and *Glasgow Corporation v. Barclay, Curle & Co.* (1923), 87 J. P. 160; 93 L. J. (P. C.) 1; 26 Digest 462, *s.* In *Wednesbury Corporation v. Lodge Holes Colliery Co., Ltd.*, [1907] 1 K. B. 78; 71 J. P. 73; [1908] A. C. 323; 72 J. P. 417; 26 Digest 331, 630, a highway vested in the plaintiffs subsided in consequence of the working of the defendants' coal mines. The plaintiffs raised the highway to its former level, and sought to recover the expenses of so doing from the defendants, who contended that they were only liable to pay the cost of making the highway as commodious to the public as it was before, without raising it to its former level. It was held by the Court of Appeal that the plaintiffs, acting bona fide in the interests of the public, were entitled to raise the highway to its former level, and to recover the cost of so doing from the defendants. The House of Lords, however, held that they were not necessarily entitled to raise the road to the old level regardless of cost; and that, as in the view of the court they had acted under the mistaken belief that they were bound or at least entitled to so restore it at the colliery company's expense, and, so thinking, had not considered whether it was reasonably necessary to do so in the interests of the public, they were not entitled to recover more than the cost of making the highway as commodious to the public, within reasonable limits, as it was before. See also as to the meaning of the word "vest," *Ystradgynog and Pontypridd Main Sewerage Board v. Bensted*, [1906] 1 K. B. 294; 70 J. P. 240; [1907] A. C. 264; 71 J. P. 425.

Effect of
statutory
vesting on
overhead
wires,
tunnels,
pipes, etc.

The vesting of the streets in the urban authority under this section does not confer upon them such a property in the streets as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, such wire being erected at a great height and causing no appreciable danger to the public or to the traffic in the street (*Wandsworth District Board of Works v. United Telephone Co.* (1884), 13 Q. B. D. 904; 48 J. P. 676; 26 Digest 328, 607). A road was constructed by turnpike trustees under a local Act of 1826. The site or part of the site of the road where the wires of an electric light company crossed it was in 1828 conveyed to the trustees in fee simple under the Turnpike Roads Act, 1822 (9 Halsbury's Statutes 276). The company carried across the road at a height of thirty-four feet two guide or supporting wires, intended to support a cable carrying a supply of electricity to the house of a customer. The road became vested in an urban sanitary authority under s. 149. It was held that the fact that originally the fee simple was conveyed to the trustees was no evidence that the soil *ad inferos* and the air *ad superos* were prior to or at the date of action brought, necessary for "street purposes" and so vested in the authority, and that the extent of the "area of user" is a question of fact; and that, so long as the company did not encroach upon that area, they were entitled to carry their wires across the street (*Finchley Electric Light Co. v. Finchley U. D. C.*, [1903] 1 Ch. 437; 67 J. P. 97; 26 Digest 329, 608). In *Postmaster-General v. Hutchings*, [1916] 1 K. B. 774; 80 J. P. 246; 42 Digest 892, 38, it was held that the freeholder of land over which highways which had not been taken over by the local authority ran was not entitled to attach a condition requiring payment

to his consent for the erection of telegraph wires over such highways. Where an authority contracted with an electric lighting company for the lighting of the district, an injunction was granted to restrain a defendant claiming to own the subsoil of half a road, from interfering with poles erected in the road and electric wires. It was held that the road being a street within the above section, the local board were entitled to more than the surface; they had an area of user necessary for the exercise of their statutory powers, *e.g.*, of lighting the district, and their contractors could justify under them (*Fareham L. B. v. Smith* (1891), 90 L. T. Jo. 467; and *cf. Escott v. Newport Corporation*, *ante*, p. 29). As to the construction by the local authority of a urinal partly below the level of the street, see *Tunbridge Wells (Mayor, etc. of) v. Baird*, [1896] A. C. 434; 60 J. P. 788; 38 Digest 230, 607, and *Westminster Corporation v. L. & N. W. Rail. Co.*, [1905] A. C. 426; 69 J. P. 425; 26 Digest 516, 2194 (as to the metropolis). It was in the first of these cases held that the section does not vest the subsoil in the urban authority, and consequently that the urban authority could not excavate the soil and construct lavatories below the surface. See now, however, the P. H. A., 1936, s. 87, *ante*, p. 276. The statutory vesting of a road does not prevent the owner of the subsoil from tunnelling through it, provided that in an urban district the written consent of the local authority is first obtained (see s. 26, *ante*, p. 4346) (*Mayor, etc. of Poplar v. Millwall Dock Co.* (1904), 68 J. P. 339; 26 Digest 330, 622; *cf. Walker U. D. C. v. Wigham Richardson & Co., Ltd.* (1901), 86 J. P. 152; 85 L. T. 579; 26 Digest 328, 603; *Cunliffe v. Whalley* (1851), 13 Beav. 411; 26 Digest 326, 592; *Cattle v. Stockton Waterworks Co.* (1875), L. R. 10 Q. B. 453; 39 J. P. 791; *Schweder v. Worthing Gas Light and Coke Co.*, [1912] 1 Ch. 83; 76 J. P. 3; 25 Digest 473, 23); and it has been held that an urban authority could not authorise private persons to lay pipes for trade purposes in a street vested in them, though the pipes were in the macadam or made ground of the street (*Salt Union, Ltd. v. Harvey* (1897), 61 J. P. 375; 13 T. L. R. 297; 26 Digest 326, 595; and *cf. Goodson v. Richardson* (1874), 9 Ch. App. 221; 38 J. P. 436; 26 Digest 326, 588; *Wood v. Ealing Tenants, Ltd.*, [1907] 2 K. B. 390; 71 J. P. 456). See also, hereon, *Att.-Gen. v. Barker*, *infra*, and *Att.-Gen. v. Mayo C. C.*, [1902] 1 I. R. 13; 26 Digest 451, *l.* Where an electric lighting company had wrongfully, and without authority, broken the surface of a street, and laid pipes and wires beneath it, it was held that they were not guilty of a continuing trespass against the local authority by allowing the pipes and wires to remain beneath the surface, and a mandatory injunction to compel the removal of the pipes and wires was refused (*St. Mary, Battersea (Vestry of) v. County of London and Brush Provincial Electric Lighting Co.*, [1899] 1 Ch. 474; 26 Digest 328, 602). If a right to open the street for repairing mains is claimed, the local authority may obtain an injunction. See *Hyde (Mayor, etc. of) v. Oldham, etc. Electric Tramway Co., Ltd.* (1900), 64 J. P. 596; 16 T. L. R. 492. A suit by a telephone company against a local authority to recover damages for cutting down and removing telephone wires stretched across a public street, the claim being based on an alleged statutory right, failed on the ground that the company was not authorised by statute so to place their wires (*National Telephone Co. v. St. Peter Port (Constables of)*, [1900] A. C. 317; 42 Digest 896, 63).

Presumably the "vesting" of a street extends to the entire highway which the public have the right to use, which, *prima facie*, includes not only the *via trita* but the entire space between the fences; see as to the width of highways, *R. v. United Kingdom Telegraph Co.* (1862), 2 B. & S. 647, *n.*; 26 Digest 313, 452, and cases cited therewith in notes to the L. G. A., 1888, s. 11 (1), *post*, p. 4726.

An authority who erect in a highway, though vested in them, a stand to view a procession are liable as for a nuisance to a householder whose view is obstructed (*Campbell v. Paddington Borough Council*, [1911] 1 K. B. 869; 75 J. P. 277; 26 Digest 429, 1483).

As to how much of a "county road" vests in a county council under the L. G. A., Vesting of 1888, s. 11, *post*, p. 4726, as amended by the L. G. A., 1929, Pt. III., Vol. V. and "county roads." 10 Halsbury's Statutes 903, see *Curtis v. Kesteven C. C.* (1890), 45 Ch. D. 504; 26 Digest 391, 1174, and *Reigate Corporation v. Surrey County Council*, [1928] Ch. 359; 92 J. P. 46; Digest Supp. And see *Att.-Gen. v. Barker* (1900), 83 L. T. 245; 26 Digest 414, 1334, where FARWELL, J., said: "In my opinion Parliament has vested the soil of the roads in them (the county council) *qua* roads, and simply to the extent necessary for the purpose of preserving and maintaining and using them as roads."

Note to
Section 149.

The Irish courts have held that a county council cannot legally sanction the erection of a permanent structure not authorised by the necessities of the public service along or upon a county road (*Att.-Gen. v. Mayo C. C.*, [1902] 1 I. R. 13; 26 Digest 451, *l.*), and in *Att.-Gen. v. Barker* (1900), 83 L. T. 245; 26 Digest 414, 1334, it was held that a tramway laid across a county road by persons acting without statutory powers, and found to be a nuisance, was unlawful even though (as was assumed) it had been laid and continued under the licence of the county council. *Cf. Matson v. Baird & Co.* (1878), 3 App. Cas. 1082; 43 J. P. 90. Notwithstanding the text, a "county road" in an urban district is vested in the county council, unless the urban authority have "claimed" the road under s. 32 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 906.

Minerals
beneath
"vested"
roads.

By the Highways and Locomotives (Amendment) Act, 1878, s. 27 (*post*, p. 4611), notwithstanding anything contained in the P. H. A., 1848, s. 68, or in the P. H. A., 1875, s. 149, all mines and minerals of any description whatsoever under any dis-turptured road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway. This section extends to the Isle of Wight and South Wales. As to the rights of the local authority under the latter part of this section, see *Att.-Gen. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 59 J. P. 70; 26 Digest 331, 629; *Wednesbury Corporation v. Lodge Holes Colliery Co.*, *ante*, p. 4378.

Divestment,
if highway
stopped up
or diverted.

A plaintiff having, with leave of the Metropolitan Board of Works, made a new street over his land, on which were two old streets, N. and A., orders were made at quarter sessions for stopping up part of N. street as unnecessary, and for diverting a part of A. street and opening the new street in lieu thereof. The vestry of the parish gave notice to the plaintiff that he must not convert to his own use the stopped up part of N. nor stop up A., or convert any part of the soil of it to his own use until he had purchased the same from the vestry. It was held by the Court of Appeal that under the Metropolis Management Act, 1855, s. 96 (11 Halsbury's Statutes 907), all streets being, for the time being, highways, were vested in the vestry, but only so long as they were highways; and that when they ceased to be highways by being legally stopped up or diverted, the interest of the vestry determined. It was therefore held that the plaintiff was entitled to convert to his own use the stopped up part of N., and the diverted part of A., subject, as to A., to his first obtaining a certificate (under the Highway Act, 1835, s. 91 (9 Halsbury's Statutes 103)) that the substituted street had been completed and put into good condition and repair (*Rolls v. St. George-the-Martyr, Southwark*, *ante*, p. 4377). See also the observations of Lord HERSHELL on *Coverdale v. Charlton in Tunbridge Wells (Mayor, etc. of) v. Baird*, *ante*, p. 278.

It was held that a rent-charge issuing from lands adjoining certain roads, and granted at a time when such roads were private in return for the use thereof and of a sewer, was not determined by the roads becoming highways repairable by the inhabitants at large and the sewer becoming vested in and discontinued by the local authority; and that it was immaterial that the grantee of the rent-charge had covenanted to keep the roads and sewer in repair (*Merrett v. Bridges* (1883), 47 J. P. 775; 26 Digest 305, 367).

The duty to
repair, its
enforcement
and extent.

(f) This section is imperative as to keeping in repair. S. 299, *post*, p. 4508, does not apply to default of this character. That section is now, however, repealed, except as regards county boroughs, by the L. G. A., 1929. Under s. 57 (3), Vol. V. and 10 Halsbury's Statutes 923 (now replaced for this purpose by the P. H. A., 1936, s. 322, *ante*, p. 665), in relation to district councils, action might be taken on the ground that there had been default "in discharging a function relating to public health which it is their duty to discharge"; moreover, as by s. 144, *ante*, p. 4350, the urban authority are the highway authority within their district, proceedings to compel repairs may be taken under the Highway Acts.

The duty to repair a highway entails as a general rule an obligation to keep it in such repair as to be reasonably passable for the ordinary traffic of the neighbour-

hood at all seasons of the year (*R. v. High Hadden* (1859), 1 F. & F. 678; 26 Digest 353, 789, per BLACKBURN, J.; *Mildred v. Weaver* (1862), 3 F. & F. 30; 26 Digest 299, 293, per ERLE, C.J.; *Burgess v. Northwich L. B.* (1880), 6 Q. B. D. 264; 45 J. P. 256; 26 Digest 335, 661, per LINDLEY, J.; *R. v. Henley* (1847), 2 Cox C. C. 334; 26 Digest 352, 786). In *Attorney-General and Ormerod Taylor & Son, Ltd. v. Todmorden Corporation*, [1937] 4 All E. R. 588; Digest Supp., a highway, vested in the defendant corporation and situated on an incline, was supported by a retaining wall which was extended upwards above the road to the height of about two feet six inches as a fence wall. The whole wall was a dry wall, the stones not being cemented together, but there was evidence of minor collapses in recent years. It was held that the wall was not a public or private nuisance as there was no indication that it was in a dangerous condition, and further that a highway authority's non-liability for non-feasance has not been altered as to main roads by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, their sole duty was to keep the wall in a state of repair sufficient to support the highway and not to reconstruct it in accordance with the best modern engineering practice. An authority ought to alter the standard of a road from time to time as the ordinary traffic upon it increases or alters (*Chichester Corporation v. Foster*, [1906] 1 K. B. 167; 70 J. P. 73; 26 Digest 431, 1500; *Kilkenny C. C. v. Hayden* (1911), 46 Ir. L. T. 95; *Donegal C. C. v. Robinson* (1914), 48 Ir. L. T. 182; *Sharpness New Docks, etc. Co. v. Att.-Gen., Att.-Gen. v. G. N. Rail. Co., Att.-Gen. v. Lagan Navigation Co.*; and *Manchester Corporation v. Audenshaw, U. D. C.*, p. 4373, ante). But, as against the owner of the soil, the mere common law powers of surveyors of highways do not justify an authority in converting a path into one of a totally different kind (e.g., by making cuttings and bridges), under the guise of repairing it (*Rudcliffe v. Marsden U. D. C.* (1908), 72 J. P. 475; 26 Digest 353, 794). The mode of repairing within legal limits is in the discretion of the authority (*R. v. Claxby* (1855), 19 J. P. 295; 24 L. J. Q. B. 223; 26 Digest 352, 788; *Att.-Gen. v. Staffordshire C. C.*, [1905] 1 Ch. 336; 69 J. P. 97; 26 Digest 353, 797; *R. v. Wilts and Berks Canal Co.*, [1912] 3 K. B. 623; 77 J. P. 24; 16 Digest 295, 1082; *R. v. Clare C. C.*, [1904] 2 I. R. 569; 26 Digest 375, q). But their powers under the section must be exercised in a reasonable manner, as in the exercise of all statutory powers (*Howard-Flanders v. Maldon Corporation* (1926), 90 J. P. 97; 135 L. T. 6; Digest Supp.). The court refused to quash resolutions of a corporation for the payment of money for paving a road with tarmac, the corporation having bonâ fide arrived at the conclusion that the work would improve the highway for use by the inhabitants of, and visitors to, the borough, although the immediate occasion for the work was a projected meeting of the Automobile Club for motor car speed trials (*R. v. Brighton Corporation, Ex parte Shoesmith* (1907), 71 J. P. 265; 96 L. T. 762; 26 Digest 386, 1148).

The obligation imposed by s. 149 to repair streets repairable by the inhabitants was held not to impliedly repeal a section of a local Act under which an authority might call upon the frontagers of any street (whether so repairable or not) which was not completed to their satisfaction to complete it, and upon default of the frontagers might do the work and recover the expense from them (*Ashton-under-Lyne (Corporation of) v. Pugh*, and other cases cited therewith, on p. 4394, post).

There is in this Act no section like s. 53 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 547), which (where in force) enables an authority to charge on frontagers the cost of making good any public highway, even though repairable by the inhabitants, if it has never previously been made good. See as to it, *R. v. G. W. Rail. Co.* (1859), 28 L. J. M. C. 246; 26 Digest 519, 2208; *Portsmouth Corporation v. Smith* (1885), 10 App. Cas. 364; 49 J. P. 676; 26 Digest 519, 2209; *Crumph v. Chorley Corporation* (1908), 72 J. P. 334; 98 L. T. 805; 26 Digest 520, 2210.

Local authorities have no express statutory authority for the execution of sea defence works. Numerous loans are, however, raised by the councils of coastal works. towns for the purpose with the sanction of the Minister of Health. The view taken is that a local authority are empowered to construct such works wherever necessary for the protection of public highways vested in them or of property belonging to them. An instructive report by one of the Ministry's engineering inspectors was circulated in 1925 which is reproduced in Vol. III., ante, p. 3718. See also notes to s. 11, L. G. A., 1888, post, p. 4726, as to the duty of a local authority as regards the protection of a county road in certain circumstances.

Note to
Section 149.

**Note to
Section 149.**

Raising,
lowering, or
altering
streets.

No action lies
in respect of
authorised
works
properly
executed.

(g) *Boulton v. Crouther* (1824), 2 B. & C. 703 ; 26 Digest 334, 657, established the principle that where a public body have conferred upon them by statute power to execute works for the public good, they are not liable to be sued in respect of damage which they cause to private individuals in the due and careful exercise of those powers. It was decided with reference to the Turnpike Roads Act, 1822, s. 83, which authorised the trustees to divert, shorten, alter, or improve the course or path of any of the roads under their management, and to divert, etc. any roads through or over any private lands, tendering or making satisfaction to the owners thereof and persons interested therein for the damage sustained thereby. It was held that under this clause the trustees were authorised to lower hills and raise hollows, and were not liable to an action for consequential injury resulting from their altering the level of the road opposite the entrance to certain premises. Where a local Act empowered a council to alter the level of any street, it was held that they had not exceeded their powers by erecting a bridge in the line of a street over a canal (*Beaver v. Mayor, etc. of Manchester* (1857), 8 E. & B. 44 ; 26 Digest 269, 91). In another case where an action was brought against a local board for lowering a highway and thereby obstructing the access to a house, the court held that the plaintiff had no right of action (*Bold v. Williams* (1857), 21 J. P. N. 84 ; 26 Digest 335, 658). In *Wedmore v. Bristol Corporation* (1862), 7 L. T. 459 ; 26 Digest 334, 650, an injunction to restrain the raising of a footway was refused though damage was shown, there being statutory power to alter the level of the footpath. See, however, as to compensation, *post*, p. 4383.

A highway, forming one of the approaches to a bridge, subsidised by reason of pumping operations. The roadway over the bridge was vested in the county council, who resolved to raise the highway to its original level. A frontager sought to restrain the raising of the highway so as to interfere with the access to his premises, but the injunction was refused (*Atherton v. Cheshire C. C.* (1895), 60 J. P. 6 ; 26 Digest 334, 655).

In *Attorney-General and Ormerod Taylor & Son, Ltd. v. Todmorden Corporation, ante*, p. 4381, in the course of adapting the road to modern traffic conditions, the corporation had raised the level of its surface, and it was contended that this had increased the pressure on the wall which was an act of misfeasance when the wall had not been strengthened. It was held that it was not an act of misfeasance as no proof had been given that the wall had been weakened in any way and the reduction in height of the fence wall did not amount to such an act.

A district board in the metropolis was held entitled to lower the surface of a street without making a corresponding alteration in the position of water-pipes in the street (*Southwark and Vauxhall Water Co. v. Wandsworth District Board*, [1898] 2 Ch. 603 ; 62 J. P. 756 ; 26 Digest 488, 1997). And see *Ferrar v. London Commissioners of Sewers* (1869), L. R. 4 Ex. 227 ; *East Freemanle (Mayor of) v. Annois*, [1902] A. C. 213 ; 26 Digest 455, 1711 ; *Ash v. Great Northern, Piccadilly, etc. Rail. Co.* (1903), 67 J. P. 417 ; 19 T. L. R. 639 ; 38 Digest 46, 274.

But an authority would not be permitted to so alter the level of a street as to cause unnecessary damage, for (although there may be a compensation section in a statute) a private individual is not restricted to his right to compensation if the authority exercise their statutory powers unreasonably (*Roberts v. Charing Cross, Euston and Hampstead Rail. Co.* (1903), 87 L. T. 732 ; 19 T. L. R. 160 ; 42 Digest 723, 1423). A local board in repairing and improving a road raised a footpath by its side a few inches, and the effect was to prevent water which fell upon the space between a warehouse of the plaintiff, in which needles were stored, and the road from draining into the road. On bill filed by the plaintiff, it was held that the board had no right to make improvements in a way calculated to cause unnecessary damage to him, that the evil complained of was one of easy remedy, and that the case was not one for pecuniary compensation ; a mandatory injunction was granted to prevent the board from allowing such water to remain dammed up to the injury of the plaintiff (*Milward v. Redditch L. B.* (1873), 21 W. R. 429 ; 26 Digest 334, 651). And see *Shill v. Gloucestershire C. C.*, (1893), Times, October 30th, and *Rockford v. Essex C. C.* (1915), 85 L. J. Ch. 281 ; 14 L. G. R. 33 ; 26 Digest 407, 1288.

Where a local authority under the powers of this section widened a narrow lane, on one side of which was a raised footpath and on the other a wider footpath on the same level as the carriage-way, by entirely removing the raised footpath so as to leave the

approach to plaintiff's premises more dangerous and less convenient than before, it was held that the local authority had exercised their powers arbitrarily, carelessly, or oppressively, and that an action lay (*Howard-Flanders v. Maldon Corporation* (1926), 90 J. P. 97; 135 L. T. 6; Digest Supp.).

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A line of kerbing ran across a street above the plaintiffs' premises and guided surface water flowing out of a cross road to the plaintiffs' side of the street, and so past their premises. The authority substituted a retaining wall for the kerbing. Owing to the wrongful act of third parties on land over which the authority had no control, an unusual flow of water ran down the road and did damage to the plaintiffs' premises. It was held that the authority were not liable; the damage was occasioned by the unexpected flow of water for which they were not responsible, and they were not negligent in not so building the wall that it could not divert towards the plaintiffs' premises a flow which they had no reason to foresee (*Ely Brewery Co. v. Pontypridd U. D. C.* (1903), 68 J. P. 3; 2 L. G. R. 40; 26 Digest 407, 1287).

S. 308 of this Act, *post*, p. 4515, provides, however, for the payment of compensation for injuries sustained by persons in consequence of the exercise of the powers conferred by this Act. Therefore, where an authority executed works under s. 150, *post*, p. 4388, and in so doing altered the level of the street so as to make the access to one of the houses in the street difficult and dangerous, it was held that though the owner of the house was liable to pay his proportion of the expenses, he was nevertheless entitled to compensation under the P. H. A., 1848, s. 144 (corresponding to s. 308, *post*, p. 4515), for the special damage he had sustained in order that his neighbours and the district generally might be benefited (*R. v. Wallasey L. B.* (1869), L. R. 4 Q. B. 351; 33 J. P. 677; 26 Digest 335, 659). Abutting upon a highway the plaintiff had land on which an inn and stabling had been erected. These stood back from the highway, and in front of them was an open space forming part of the same land, which had been left open to and on a level with the highway. The defendants in exercise of their powers under this section, placed kerbstones and a raised footpath at the side of the highway, leaving openings so that carriages could still pass at convenient places to and from the plaintiff's premises. It was held that he was not entitled to a mandatory injunction directing the defendants to remove the kerbstones, and that in the absence of any unreasonable conduct his remedy for any injury caused by the kerbstones would be by compensation under s. 308 (*Sellers v. Matlock Bath L. B.* (1885), 14 Q. B. D. 928; 26 Digest 332, 638).

The footpath of a street which was a highway and also a turnpike road within the district of a local board was altered by them under an agreement with the turnpike trustees (see s. 148, *ante*, p. 4369), so as to raise the level of the footpath in front of the plaintiff's house and cause him damage. It was held by BRETT and COTTON, L.JJ., reversing the judgment of the Queen's Bench Division (BRAMWELL, L.J., *diss.*), that a street which was also a turnpike road was not excluded by the definition (see s. 4, *ante*, p. 4336, from the operation of the P. H. A., 1848, s. 68 (corresponding to this section), and that the plaintiff was therefore entitled to compensation under s. 144 of that Act (*Nutter v. Accrington L. B.* (1878), 4 Q. B. D. 375; 43 J. P. 635; affirmed in H. L. (1880), 43 L. T. 710; 26 Digest 335, 660; see also as to a turnpike road being a street, *Thomas v. Roberts* (1878), 43 J. P. 574; 26 Digest 271, 107). In the *Accrington Case* the majority of the court assumed that the alteration had been done in pursuance of the P. H. A., 1848, s. 68, corresponding to this section. But in the judgment of BRAMWELL, L.J., it was pointed out that had the act complained of been done by the turnpike trustees, no action would have lain against them on the principle established in *Boulton v. Crouther*, *supra*. "And," he continued, "usually, a person cannot raise or lower a road in front of another man's park gate, and so leave his park gate high up in the air, or below the level of the road, because any person having the right is not likely to interfere with the level of the road. But supposing that the owner of property adjoining a highway is not the owner of the soil in the highway, I do not think he has any right by the law of the land to have the road continued at a particular level. It may be a great inconvenience to him, no doubt, to have the road altered if he has built with reference to the level of the road; but it may be an inconvenience to the public not to have the road altered, and I do not know that he has any vested right in the road remaining at that level to the inconvenience of all mankind." In every case, therefore, where compensation

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is claimed it becomes material to consider whether the act causing the injury has been done pursuant to this section, or whether it is such an act as might be justified by the board under their general powers as surveyors of highways. See upon this question, *Taylor v. Meltham L. B.*, and cases cited therewith, on p. 4365, *ante*; *Burgess v. Northwich L. B.*, and *Pearsall v. Brierley Hill L. B.*, *ante*, p. 4363; *Douglass v. Rhyl U. D. C.*, [1913] 2 Ch. 407; 77 J. P. 373; 13 Digest 386, 1135, and *Rochford v. Essex C. C.* (1916), 85 L. J. Ch. 281; 14 L. G. R. 33; 26 Digest 407, 1288.

An authority were empowered by a local Act to acquire a bridge with the approaches thereto, with power to "alter," etc. the bridge and the approaches thereto, and for that purpose to acquire land by agreement under and subject to the provisions of the P. H. A., 1875. The approaches to the bridge were a highway. A was the owner of a house bordering on and having a door giving access to the highway. The authority, without agreeing with A., proceeded to alter the highway and construct other works, so as to block the access to A.'s house and otherwise to interfere with her premises. A. brought an action to restrain the authority from continuing their operations. The authority alleged that A.'s only remedy was compensation under the P. H. A., 1875, s. 308, *post*, p. 4515. It was held that this was so, and that no action lay (*Arnott v. Whitby U. D. C.* (1908), 73 J. P. 64; (1909) 73 J. P. 369; 101 L. T. 14; 26 Digest 334, 656, 654).

**Decisions
upon points
arising under
local Acts.**

Section 55 of Oldham Police Act, 1826, empowered commissioners to pave in a sufficient manner, on default of the owners or occupiers for six months after notice requiring them to do so, "the public streets, ways, and passages within the said township which are now built upon, but not made, paved, flagged, cleansed, or otherwise put into good order and condition, and all such other streets, etc., which are now making or being built upon or may hereafter be made, laid out, or built upon, or such thereof respectively as may require the same." Section 56 empowered the commissioners, after such streets should have been completed as to paving, etc., and the owners should have paid the expenses, to declare them highways. Section 53 empowered and required the commissioners to cause the present and future streets to be paved, etc., and the ground or soil thereof to be raised, lowered, or altered from time to time in such manner and with such materials as the commissioners should think fit. Section 54 enabled the commissioners to declare new streets to be highways, provided they were of certain width. The Act did not contain a clause giving compensation for damages occasioned by the exercise of the powers conferred by s. 53. It was held that the general powers conferred by s. 53 were to be exercised for the repair only of pavements in old streets and streets declared to be highways under the Act; that they were inconsistent with the specific powers conferred by ss. 55, 56; and that the lowering of the ground or soil of the streets described in ss. 55, 56 was an act of trespass not to be justified under s. 53 (*Brown v. Clegg* (1851), 16 Q. B. 681; 15 J. P. 609; 26 Digest 549, 2457).

By s. 15 of West Ham Local Board of Health Act, 1867, the local board were directed to cause offensive ditches to be cleansed, covered, or filled up; and s. 16 empowered them to cause the ditches at the sides of or across public roads to be filled up, and to substitute pipe and other drains, and from time to time to amend the same; and the surface of the land gained by filling up such ditches might, if the board thought fit, be thrown into the roads and ways, and be repairable as part thereof. The plaintiff was owner of a close adjoining a public highway, and between the close and the highway was a strip of land averaging nine feet in width. Upon the strip of land ran a ditch, the bank of which, on the plaintiff's side, was three feet in width, and covered with grass, and the bank on the roadside was one foot in width, and covered with grass. At the side of the road were posts and rails above two feet high. The plaintiff and his predecessors had usually repaired the posts and rails, but on two or three occasions the surveyors of the highways and the local board had repaired them without the plaintiff's knowledge. The board having removed the posts and rails, and covered the ditch, it was held that they had no power to do so, the ditch not being "at the side of a public road" within s. 16, and presumably belonging to the plaintiff as owner of the adjoining land (*Tutill v. West Ham L. B.* (1873), L. R. 8 C. P. 447; 37 J. P. 455; 26 Digest 323, 565. Cf. *Chorley Corporation v. Nightingale*, [1906] 2 K. B. 612; 70 J. P. 500, *Walmsley v. Featherstone U. D. C.* (1909), 73 J. P. 322; 7 L. G. R. 806; 26 Digest 310, 439, and *Hanscombe v. Bedfordshire C. C.*, [1938] Ch. 944; [1938] 3 All E. R. 647; 103

J. P. 413; Digest Supp., for decisions as to whether roadside ditches, piped and filled up, formed part of the highway or not).

A public body, with statutory powers to stop up, alter, or use for the purpose of the authorised works, certain specified streets, were restrained by injunction from interfering, in excess of their powers, with the cellar of a house in one of the streets, the roadway in which was being lowered, until the amount of compensation for the whole house should have been ascertained and paid. An inquiry as to the damages sustained by the plaintiff, the owner and the occupier of the house, by reason of the works commenced by the defendants, having been directed by the decree, it was held that the plaintiff was not entitled to be compensated for the indirect injury to his trade resulting from the diversion of traffic caused by the authorised act of lowering the roadway, but only for direct structural injury occasioned by the unauthorised interference with his cellar (*Bigg v. Corporation of London* (1873), L. R. 15 Eq. 376; 37 J. P. 564; 26 Digest 336, 662).

(h) The owners of land adjoining a highway are not in general bound to fence it from the highway. Where a sewer belonging to the metropolitan commissioners adjoined a highway, it was held that they were not liable for an accident caused by its being unfenced (*Cornuall v. Metropolitan Commissioners of Sewers* (1855), 10 Exch. 771; 19 J. P. 313; 41 Digest 52, 377). And where a fence has been erected, there is no liability in respect of it, unless it is a nuisance (*Gibson v. Plumstead Burial Board* (1897), 13 T. L. R. 273; Digest Supp.; *Harrold v. Watney*, [1898] 2 Q. B. 320; 36 Digest 69, 443; see *Barker v. Herbert and Smith v. Keys*, on p. 296, *ante*, as to a defective area railing), and see *Horridge v. Makinson* and *Daniel v. Rickett, Cockerell & Co., Ltd.*, cited on p. 4361, *ante*, as to the liability for an opening left in the pavement of a footpath to admit of access to a coal shoot. A duty is, however, cast upon those who in the exercise of statutory powers divert a public footpath, to protect, by fencing or otherwise, reasonably careful passengers from injury through going astray at the point of diversion (*Hurst v. Taylor* (1885), 14 Q. B. D. 981; 49 J. P. 359; 26 Digest 477, 1897). A local Act provided that, if the corporation were of opinion that danger to the public was likely to ensue by reason of land abutting on streets not being fenced, the owner of any such land should, when required by the corporation, and to their satisfaction, fence off the land from the street, and should afterwards keep such fence in repair. It was held that the Act did not apply to the retaining walls of an old turnpike road, but applied only to new streets where there were no fences, and which, in the opinion of the corporation, were dangerous to the public (*Rotherham (Mayor, etc. of) v. Fullerton* (1884), 50 L. T. 364; 26 Digest 390, 1169). See, now, as to dangerous places adjoining highways, and as to fencing lands adjoining streets, the P. H. A., 1907, ss. 30, 31, *post*, pp. 5050, 5051, and see also the Towns Improvement Clauses Act, 1847, s. 83, *ante*, p. 4211.

The provision in s. 149, *ante*, p. 4375, is permissive, and no compulsion or duty is cast upon the urban authority. Therefore, where a goit ran by the side of an ancient public footpath, it was held that the local board were not bound to fence the path from the goit to prevent accidents (*Wilson v. Halifax (Mayor, etc. of)* (1868), L. R. 3 Exch. 114; 32 J. P. 230; 7 Digest 293, 200). But if a council pull down a fence placed to protect passengers from falling into a ditch by the side of a road, in order to repair it, and before repairs are executed an accident occurs through want of a fence, they will be liable as for misfeasance (*Whyler v. Bingham R. D. C.*, *ante*, p. 4356).

(i) In general no person or company may take up or interfere with a highway so as to create a nuisance. See *R. v. Longton Gas Co.* (1860), 24 J. P. 214; 29 L. J. open high-
M. C. 118; 26 Digest 444, 1618; *Ellis v. Sheffield Gas Consumers' Co.* (1853), 2 ways.
E. & B. 767; 17 J. P. 823; 26 Digest 421, 1400; *Pudsey Coal Gas Co. v. Bradford (Mayor of)* (1873), L. R. 15 Eq. 167; 37 J. P. 340; *Stockport Waterworks Co. v. Manchester Corporation* (1863), 9 Jur. (N. S.) 266; *Att.-Gen. v. Wheatley & Co.*, Times, December 16th, 1903; *Att.-Gen. v. Scott*, [1904] 1 K. B. 404; 68 J. P. 137; 26 Digest 430, 1498; *Cavan C. C. v. Kane*, [1910] 2 I. R. 644; [1913] 2 I. R. 250; 26 Digest 470, 1; *Kilkenny C. C. v. Hayden* (1913), 46 Ir. L. T. 95. In *Stockport Waterworks Co. v. Manchester Corporation*, *supra*, it was held that the taking up of the pavement and digging trenches in the roadway and footway of a public thoroughfare, in order to lay down service pipes for the supply of gas from mains to private houses, are not acts which can be justified at common law as done in the exercise of the right of every occupier of a house to make such a temporary obstruction of the highway as may be necessarily incidental to the enjoyment of his property; and a

**Note to
Section 149.**

householder who authorises such acts, and they who do them, having no parliamentary powers for the purpose, are liable to be indicted for a nuisance. No lapse of time is an answer to an indictment for causing a nuisance on a highway (*R. v. Cross* (1812), 3 Camp. 224; 36 Digest 218, 602; *R. v. Edwards* (1846), 11 J. P. 602, n.; *Harvey v. Truro R. D. C.*, [1903] 2 Ch. 638; 68 J. P. 51; 26 Digest 313, 454). Nor is the consent of a local authority under this section an answer to an indictment, for the power to consent is limited to works authorised by the Act (*Hawkins v. Robinson* (1872), 37 J. P. 662; 26 Digest 420, 1396; see also *Harvey v. Truro R. D. C.*, *supra*; *Att.-Gen. v. Mayo C. C.*, [1902] 1 L. R. 13; 26 Digest 451, 1; *Preston (Mayor of) v. Fulwood L. B.*, *infra*). The consent of a highway authority to a tramway crossing a highway is of no effect, at any rate if the crossing is a nuisance (*Att.-Gen. v. Barker* (1900), 83 L. T. 245; 26 Digest 414, 1334), and *cf. Matson v. Baird & Co.*, (1878) 3 App. Cas. 1082; 39 L. T. 304.

The Court of Chancery refused to interfere by injunction where the injury done by the opening of streets was temporary and trivial (*Att.-Gen. v. Sheffield Gas Consumers' Co.* (1853), 22 L. J. Ch. 811; 26 Digest 450, 1663; *Att.-Gen. v. Cambridge Consumers' Gas Co.* (1868), 4 Ch. App. 71; 33 J. P. 147; 26 Digest 451, 1664); and see further as to nuisances of a trivial or negligible character, *R. v. Lepine* (1866), 15 L. T. 158; 26 Digest 446, 1631; *R. v. Tindall* (1837), 6 Ad. & El. 143; 1 J. P. 139; 36 Digest 162, 41; *R. v. Betts* (1850), 16 Q. B. 1022; 36 Digest 158, 18; *R. v. Russell* (1854), 3 E. & B. 942; 18 J. P. 807; 26 Digest 446, 1629; *Att.-Gen. v. Mayo C. C.*, *supra*; *R. v. Bartholomew*, [1908] 1 K. B. 554; 72 J. P. 79; 26 Digest 446, 1632 (coffee stall in street); *R. v. Richmond, Surrey J.J.* (1860), 24 J. P. 422; 26 Digest 457, 1736 (trestles to divert traffic); *Wandsworth Board of Works v. L. & S. W. Rail. Co.* (1862), 26 J. P. 821; 31 L. J. Ch. 854; 26 Digest 331, 628.

An injunction was, however, granted under the following circumstances: The corporation of P., who had no parliamentary powers for the purpose, supplied water to the adjoining district of F., and claimed the right to enter upon and break up the streets of F., whenever occasion should require, for the purpose of repairing their pipes, relying, as regarded some of the streets, on alleged irrevocable licences granted by the predecessors of the local board of F. (*i.e.*, the surveyors of highways), and as regarded other streets on prescription. It was held (1) that the claim of the corporation was to commit a nuisance; (2) that it was not in the power of the surveyors of highways to grant the alleged licences; (3) that, therefore, as a grant could not be presumed, the corporation could not obtain the right claimed by prescription (*Preston (Mayor, etc. of) v. Fulwood L. B.* (1885), 50 J. P. 228; 53 L. T. 718; 26 Digest 440, 1573). See this case for an explanation of the decision in *Edgware Highway Board v. Harrow District Gas Co.* (1874), L. R. 10 Q. B. 92; 38 J. P. 806; 25 Digest 471, 11. There the plaintiffs, a highway board, agreed with the defendants, a gas company, that if the plaintiffs would give the defendants a licence to open a highway in their jurisdiction, the defendants should make good the surface of the road, and pay to the plaintiffs 1s. per yard of the highway so broken up. It was held that the contract was valid, for the agreement of the plaintiffs to allow the defendants to interfere with the surface of the road was a good consideration, and the contract was not illegal, as it did not necessarily contemplate the creation of a nuisance by the defendants. See also on this point *Dublin C. C. v. P. M. G.*, [1914] 2 L. R. 208.

As to the right of a private individual to restrain the laying of pipes in a highway the soil of which belongs to him, see *Goodson v. Richardson* (1874), 9 Ch. App. 221; 38 J. P. 436; 26 Digest 326, 588, and *Salt Union, Ltd. v. Harvey* (1897), 61 J. P. 375; 13 T. L. R. 297; 26 Digest 326, 595. The right of a local authority to prevent the laying of pipes, etc. under a street does not enable them to require the taking up of such pipes, etc. once they have been laid, though laid wrongfully (see *St. Mary, Battersea (Vestry of) v. County of London and Brush Provincial Electric Lighting Co., Ltd.*, *ante*, p. 4379). It would be otherwise if the defendants claimed the right to open the streets from time to time for repairs, etc. (see *Hyde (Mayor, etc. of) v. Oldham, etc. Electric Tramway, Ltd.* (1900), 64 J. P. 596).

Where a company has a special Act, passed before this Act, the provisions in the text will not affect their powers. In *London and Blackwall Rail. Co. v. Limehouse District Board of Works* (1856), 20 J. P. 789; 26 L. J. Ch. 164; 26 Digest 507, 2131, the general principle was laid down that when the legislature has vested special powers in a particular body for specified purposes, a subsequent general Act will not

override those special powers. Therefore, in that case, a railway company were held empowered to build a station abutting on a street in the metropolis without the consent of the district board, their local Act, which preceded the Metropolis Management Act, empowering them to do so. See also *Goldson v. Buck* (1812), 15 East. 372; 43 Digest 1071, 93; *Att.-Gen. v. Eastern Counties Rail. Co.* (1842), 10 M. & W. 263; *City and South London Rail. Co. v. London C. C.*, [1891] 2 Q. B. 513; 56 J. P. 6; 26 Digest 508, 2133; *London C. C. v. London School Board*, [1892] 2 Q. B. 606; 56 J. P. 791; 26 Digest 508, 2134; *Uckfield R. D. C. v. Crowborough Water Co.*, [1899] 2 Q. B. 664; 43 Digest 1067, 63; *Moran v. Marsland*, [1909] 1 K. B. 744; 73 J. P. 114; 34 Digest 583, 49; *Metropolitan Rail. Co. v. London C. C.*, [1913] 2 K. B. 249; 77 J. P. 190. For an instance of a power under a special Act to break up pavements to lay gas pipes, see *Dover Gas Light Co. v. Mayor, etc. of Dover* (1855), 19 J. P. 515; 1 Jur. (n. s.) 812; 25 Digest 471, 12.

As to the power to open streets for the purposes of laying mains or wires for the transmission of electricity, see the Electric Lighting Acts and *Montreal (City of) v. Standard Light and Power Co.*, [1897] A. C. 527; 20 Digest 201, h. As to the power to open streets for the purpose of laying drains, see *Att.-Gen. v. Ashby*, ante, p. 113. As to crossings over footways, see the P. H. A., 1907, s. 18, post, p. 5044. Reference may also be made to the Tramways Act, 1870, ante, p. 4272.

Under the P. H. A., 1925, s. 80, Vol. V., post, a local authority authorised to supply gas may lay gas pipes in streets which have not been dedicated to the public. See P. H. A., 1936, s. 330, ante, p. 675, and s. 153 of this Act, post, p. 4425, as to certain acts of interference with pipes, etc. authorised by this Act.

(k) The judgment of BRAMWELL, L.J., in *Coverdale v. Charlton*, ante, p. 4377, Trees in leaves open the question whether a tree in a street vests in a local authority under this section; though they have power by inference to trim and maintain existing trees on highways. In *Stillwell v. New Windsor Corpn.*, cited ante, p. 4336, it was held that trees planted on public highways after their dedication to the public vested in the highway authority under this section. See also *Surbiton Improvement Commissioners v. Metcalf* (1888), Times, Nov. 14th. In *Coverdale's Case* reference is made to trees planted by the local board, but it must not be assumed that an authority have power under this section to plant trees in streets. See a conviction for so doing in *R. v. Lewes Corporation* (1886), 2 T. L. R. 399; 26 Digest 457, 1734. The planting of trees on or near highways was discouraged by the old Highway Acts, but where the P. H. A. A., 1890, post, p. 4801, has been adopted, the authority may plant trees (s. 43, post, p. 4817), and may place in any street refuges and cabmen's shelters; and they may also authorise the erection of statues or monuments (ss. 39, 40, 42, post, pp. 4814, 4815, 4817). See also the Road Traffic Act, 1930, ss. 55, 56, and 58, Vol. V., post.

Power to plant trees is now given to all highway authorities by s. 1 of Roads Improvement Act, 1925, Vol. V. post. The "improvement of roads" in the Development and Road Improvement Funds Act, 1909, post, p. 5105, now includes the planting of trees and shrubs (s. 2, Roads Improvement Act, 1925, Vol. V., post). Where the provisions have been adopted, the P. H. A., 1925, Vol. V., post, enables local authorities to place in streets, street bins (s. 13, Vol. V., post), public drinking fountains, watering troughs or seats (s. 14, Vol. V., post), and fire alarms (s. 15, Vol. V., post).

Power to prevent the obstruction of view of users of the highway by trees growing on land adjoining is given by enabling highway authorities to require the removal of trees, hedges, etc., on land at or near a corner by s. 4, Roads Improvement Act, 1925, Vol. V., post, or to lop overhanging trees in districts where s. 23, P. H. A., 1925, Vol. V., post, has been adopted.

As to the liability of highway authorities and owners of lands adjoining highways where injury is caused to passengers by trees growing on adjoining lands falling upon the highway, see *Mackie v. W. District of Dumbartonshire C. C.* (1927), 91 J. P. 158; and *Noble v. Harrison*, [1926] 2 K. B. 332; 90 J. P. 188; 36 Digest 189, 316, referred to at p. 4355, ante. See also an article at 98 J. P. Jo. 336.

The liability of the owner of a tree for damage done by an overhanging bough to a passing vehicle was discussed by a county court judge in *Thorne v. Roberts* (1909), 128 L. T. Jo. 155, and a transport company were held liable to a passenger struck by an overhanging tree in *Radley v. London Passenger Transport Board*, [1942] 1 All E. R. 433; 106 J. P. 164.

(l) As to the recovery of this penalty, see s. 251, post, p. 4481.

Note to
Section 149.

Section 150. **150.** Where any street (*b*) within any urban (*a*) district (not being a highway repairable by the inhabitants at large) (*c*) or the carriageway footway or any other part of such street (*d*) is not sewered levelled paved metalled flagged channelled and made good or is not lighted to the satisfaction (*e*) of the urban authority, such authority may, by notice addressed to the respective owners or occupiers (*f*) of the premises fronting adjoining or abutting (*g*) on such parts thereof as may require to be sewered levelled paved metalled flagged or channelled, or to be lighted, require them to sewer level pave metal flag channel or make good or to provide proper means for lighting (*h*) the same within a time (*hh*) to be specified in such notice.

Power to
compel
paving, etc.
of private
streets (*a*).

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice (*i*).

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein (*ic*); and may recover in a summary manner (*l*) the expenses (*ll*) incurred by them in so doing from the owners, in default (*m*), according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority (*n*), or (in case of dispute) by arbitration in manner provided by this Act (*o*); or the urban authority may by order declare the expenses so incurred to be private improvement expenses (*p*).

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large (*q*).

This section will not apply to a district in which the Private Street Works Act, 1892, has been adopted. See that Act, s. 25, *post*, p. 4869.

Under the P. H. A., 1907, *post*, p. 5035B, a district council in whose district s. 19 of that Act has been put in force, may, without "making up" the whole street, require owners to execute any repairs necessary to obviate or remove danger to passengers or vehicles. See that section and notes thereto, *post*, p. 5045.

In connection with the Bill which eventually became the P. H. A., 1925, Vol. V., *post*, the M. of H. had under consideration the desirability of effecting the repeal of ss. 150—152 of the P. H. A., 1875, *post*, pp. 4388—4425, so that one code only (presumably that contained in the Private Street Works Act, 1892, *post*, p. 4848, amended to the necessary extent) should regulate the proceedings of local authorities for making up private streets. They addressed the associations representing the local government authorities to this effect, but there was apparently a want of unanimity on the subject. The Law Committee of the Association of Municipal Associations considered that s. 150 of the P. H. A., 1875, was defective in not

requiring a frontager to formulate any objection he might have to the notice served upon him until a late stage of the proceedings with the possible result that the whole cost of the work from which he benefited might be thrown upon the local authority (see in this connection, *Bristol Corporation v. Sinnott*, *post*, p. 4405). The Private Street Works Act, 1892, *post*, p. 4848, was also considered to be unsatisfactory in not following the earlier enactment as regards the power of a local authority to deal with a street part of which is a public footpath or repairable by the inhabitants at large; in making a court of summary jurisdiction the tribunal for determining questions; in the requirement as to advertisement of the resolution approving specifications, etc., in the local papers; in the inability of the tribunal to amend apportionments when the expenses exceed the estimate by more than 15 per cent. (see, however, note to s. 12 of the Private Street Works Act, 1892, *post*, p. 4861); in not enabling an action to be commenced against an owner without naming him; and in various other respects. The whole matter was under discussion by a committee at the time of the outbreak of war, but in the circumstances it is not possible to forecast when amending legislation may now be expected.

Note to
Section 150.

The M. of H. in their annual report for 1924—25 made the following remarks. They are reproduced in full as they are of value to local authorities and because they indicate certain changes of practice:—

“There has been in recent years, owing to the arrears of the war and extensive building developments, much activity on the part of local authorities in making up private streets prior to their being taken over as streets repairable at the cost of the rates. The cost of these, as of other works, is much higher than before the war, but the increase is more felt, inasmuch as it falls not upon the rates but upon the individual who owns premises fronting, adjoining, or abutting on the streets.

“The subject has an obvious bearing upon the development of land for building and the cost of providing houses. The technical advisers of the department have been in consultation recently with the Institution of Municipal and County Engineers with a view to framing a standard specification of private street works which would not be too burdensome to the frontagers on the one hand, and would be fair on the other hand to the ratepayers who have to pay for upkeep once the street is taken over. A standard specification of reasonable requirements in normal circumstances and other urban conditions was agreed with the institution and was published in their journal on June 17th, 1924. Standard specification.

“With a view to easing the burden upon owners the department are now generally willing to sanction a loan to the local authority for a period of ten years to enable them to spread the cost of the work over that period, on the understanding that a similar period is allowed to the frontagers for repayment of the cost to the local authority.” Loans.

See also s. 28 of the P. H. A., 1907, *post*, p. 5049, as to the removal or use of old materials in streets.

Any local authority who have served notices under this section or under a similar provision in a local Act may at any time if they think fit resolve to contribute a portion of the expenses of the works (s. 81, P. H. A., 1925, Vol. V., *post*). Cf. the similar provision in s. 15 of the Private Street Works Act, 1892, and the notes thereto at *post*, p. 4865.

Where, after September 8th, 1925, notices have been served under this section as respects any street and that street is sewered, paved, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then on the application in writing of the greater part in rateable value of the owners of the houses or land in such street, the urban authority shall, within three months after the time of such application, by notice put up in such street, declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large (s. 82, P. H. A., 1925, Vol. V., *post*). Cf. the similar provision in s. 20 of the Private Street Works Act, 1892, and the notes thereto at *post*, p. 4867.

A new street constructed by the local authority under s. 154 is not a private street to which s. 150 applies. See note (a) to s. 154, *post*, p. 4426.

(a) It will be observed that the section is only applied by the Act to urban districts. Many rural district councils, however, obtained orders under s. 276, *post*, p. 4502, putting the section in force in their districts. In consequence, however, of the

requiring a frontager to formulate any objection he might have to the notice served upon him until a late stage of the proceedings with the possible result that the whole cost of the work from which he benefited might be thrown upon the local authority (see in this connection, *Bristol Corporation v. Sinnott*, *post*, p. 4405). The Private Street Works Act, 1892, *post*, p. 4848, was also considered to be unsatisfactory in not following the earlier enactment as regards the power of a local authority to deal with a street part of which is a public footpath or repairable by the inhabitants at large; in making a court of summary jurisdiction the tribunal for determining questions; in the requirement as to advertisement of the resolution approving specifications, etc., in the local papers; in the inability of the tribunal to amend apportionments when the expenses exceed the estimate by more than 15 per cent. (see, however, note to s. 12 of the Private Street Works Act, 1892, *post*, p. 4861); in not enabling an action to be commenced against an owner without naming him; and in various other respects. The whole matter was under discussion by a committee at the time of the outbreak of war, but in the circumstances it is not possible to forecast when amending legislation may now be expected.

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“The subject has an obvious bearing upon the development of land for building Standard and the cost of providing houses. The technical advisers of the department have specification. been in consultation recently with the Institution of Municipal and County Engineers with a view to framing a standard specification of private street works which would not be too burdensome to the frontagers on the one hand, and would be fair on the other hand to the ratepayers who have to pay for upkeep once the street is taken over. A standard specification of reasonable requirements in normal circumstances and other urban conditions was agreed with the institution and was published in their journal on June 17th, 1924.

“With a view to easing the burden upon owners the department are now generally Loans. willing to sanction a loan to the local authority for a period of ten years to enable them to spread the cost of the work over that period, on the understanding that a similar period is allowed to the frontagers for repayment of the cost to the local authority.”

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Where, after September 8th, 1925, notices have been served under this section as respects any street and that street is sewered, paved, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then on the application in writing of the greater part in rateable value of the owners of the houses or land in such street, the urban authority shall, within three months after the time of such application, by notice put up in such street, declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large (s. 82, P. H. A., 1925, Vol. V., *post*). Cf. the similar provision in s. 20 of the Private Street Works Act, 1892, and the notes thereto at *post*, p. 4867.

A new street constructed by the local authority under s. 154 is not a private street to which s. 150 applies. See note (a) to s. 154, *post*, p. 4426.

(a) It will be observed that the section is only applied by the Act to urban districts. Rural Many rural district councils, however, obtained orders under s. 276, *post*, p. 4502, districts. putting the section in force in their districts. In consequence, however, of the

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Note to Section 150. L. G. A., 1929, s. 30, Vol. V. and 10 Halsbury's Statutes 904, rural district councils ceased to be the highway authority in their district, and by s. 30 (3), *ibid.*, functions under this section as from April 1st, 1930, ceased to be exercisable by rural district councils. This section was not applied to the county councils who succeeded the rural district councils as highway authority in rural districts, and accordingly only the Private Street Works Act, 1892, *post*, p. 4848, is operative in rural districts. As to the authority by whom functions under that Act will be exercisable in rural districts, see the notes to that Act at p. 4848, *post*.

“Street.”

(b) **Street.**—In discussing the definition of this term in s. 4, *ante*, p. 4336, it was pointed out that the word “street,” as used in this section, does not apply only to a street in the ordinary and popular sense, but has the wider meaning assigned to it by the interpretation clause. The decisions have not been uniformly to this effect, and it may be useful to set them out in chronological order. In *Maude v. Baildon L. B.* (1883), 10 Q. B. D. 394; 47 J. P. 644; 26 Digest 269, 93, the court held that the word “street” in this section was used in its ordinary sense of a road with houses more or less continuous. In *Portsmouth (Mayor, etc. of) v. Smith* (1883), 13 Q. B. D. 184; 48 J. P. 404; 26 Digest 274, 128, the MASTER OF THE ROLLS questioned that decision, pointing out that it had proceeded upon a mistaken view of *R. v. Dayman* (1857), 7 E. & B. 672; 22 J. P. 39; 26 Digest 275, 134; and the court decided that the word “street,” as used in the Towns Improvement Clauses Act, 1847, s. 53 (13 Halsbury's Statutes 547) (which corresponds to the text), was to be interpreted according to the definition, and, therefore, includes a highway which was not a street in the ordinary sense. In *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; 26 Digest 267, 72, it seems to have been assumed that the word “street” as used in the text means a street as defined by s. 4. But in *R. (on the prosecution of Cleckheaton L. B. of Health) v. Burnup* (1886), 50 J. P. 598; 26 Digest 534, 2338, the court held that the section applied only to streets in the ordinary and natural meaning of that term; that in summary proceedings under the section, it was for the justices to find as a fact, having regard to the surrounding circumstances, and to whether there was any intention of building along a road so as to convert it into a street, whether such road was a street in the ordinary and popular sense of the term; that it made no difference that the section had been applied, or might apply, to a portion of the road other than that in question; and that where the justices found a road, or a portion of a road, not to be a street in the ordinary and popular sense, they would be right in holding that the section was not applicable to the road or portion. All these cases were reviewed in *Jowett v. Idle L. B.* (1887), 57 L. T. 928; affirmed (1888), 36 W. R. 530; 26 Digest 270, 101. In that case the plaintiffs were owners of a private alley or court, and the defendants acting under this section sewered the same and paved the roadway thereof. The plaintiffs thereupon sued them for trespass. The alley or court led from a highway to a mill, and the portion sewered and paved by the defendants was bounded on each side by cottages, some twenty in number, and their gardens and yards. It was the only means of access to the cottages and mill; but the owners and occupiers of the adjoining property were the only persons having rights of road over it. The traffic in connection with the mill was very considerable. It was held that the words in the definition of “street” in s. 4 must be read into this section; that the question whether the alley or court was a street or not within the meaning of the section, was a question of law to be decided by the judge, and not a question for the jury; and that, upon the facts, the alley or court in question was a street within the meaning of the section. In *Richards v. Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48; 26 Digest 271, 102, FIELD, J., after quoting the definition of a street in s. 4, said: “On looking at the 150th section, I cannot understand how any doubt can have arisen as to reading this definition into it; but we have not to decide that point now, because in *Jowett v. Idle L. B.*, which is the last case on the point, it was decided that it must be read in.” In the same case WILLS, J., said: “It was argued that s. 4 should not be read with s. 150, and the case of *Maude v. Baildon L. B.* was cited in support of that contention, and it was said to be followed by *R. (on the prosecution of Cleckheaton L. B. of Health) v. Burnup*. I always thought that decision of *Maude v. Baildon L. B.* was wrong . . . and it now appears that it lately has been decided in the Court of Appeal in the case of *Jowett v. Idle L. B.* that the definition of the word ‘street’ given in the fourth section must be construed along with the 150th section.” *Jowett v. Idle L. B.* was again followed in *Fenwick v. Croydon R. S. A.*

[1891] 2 Q. B. 216; 55 J. P. 470; 26 Digest 271, 103. There the appellant was summoned under this section for non-payment of expenses incurred by the authority in sewerage and paving a road on which his premises abutted. An order of the L. G. B. under s. 276, *post*, p. 4502, had declared this section to be in force as to the road in question, which the order also referred to as "a street." The road ran from a turnpike road to a bridge, where it passed into another parish, and was from that point repaired by the local board of that parish as a highway. It was about 900 feet long. It had on the south side several houses, including the appellant's house, abutting on it; on the north side there were none for 785 feet from the turnpike road. For the rest of its course it was bounded on that side by the authority's sewage farm, on which were two buildings. It was a public highway. There was no evidence of formal dedication of the road, but there was evidence of its use as a highway since 1835, and some evidence before 1835, but none inconsistent with its having been then merely an occupation road or footpath. The justices held that the order of the L. G. B. was conclusive that the road was a street, and further held that, although, in their opinion, it was not a street in the popular acceptance of the word, it was a street within s. 4. On a case stated, it was held that the justices were wrong in holding that the order was conclusive that the road was a street but that by the definition in s. 4 it was a street within the meaning of this section.

A path in Epping Forest was made up as a street under the Private Street Works Act, 1892, *post*, p. 4848. The case was decided upon another point; but it was apparently considered that the path was a "street" for the purposes of the Act, though it was necessary that the consent of the Epping Forest Conservators should be given before the work was done, the land being part of the forest and subject to the Forest Act (*Woodford U. D. C. v. Henwood* (1899), 64 J. P. 148; 26 Digest 543, 2415).

Where a roadway runs over land acquired by a railway company under its compulsory powers, and the application of this section to such roadway would be inconsistent with the appropriation of the land to the objects of the company, the section cannot (*semble*) be put into operation; *secus*, where the making and dedication of such roadway, so far from being inconsistent with the company's objects, must have been contemplated by the framers of its special Act (*Stretford U. D. C. v. Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 19 T. L. R. 546; 38 Digest 251, 14). See also *Glasgow and S. W. Rail. Co. v. Ayr Magistrates*, [1912] A. C. 520, as to the site of an existing street acquired by a railway company by agreement.

A railway company built a bridge over their railway in the metropolis, with additions, on which their station was erected. They lighted the bridge with street lamps, and allowed the public for eighteen months to use it as a highway. They had made an agreement with a water company to allow water pipes to be carried over the bridge. It was held that the bridge had become by dedication a street; that the company could not close it so as to prevent the vestry paving it as a "new street"; and that the company as owners were liable to pay paving expenses (*North London Rail. Co. v. St. Mary, Islington (Vestry)* (1872), 37 J. P. 341; 27 L. T. 672; 26 Digest 276, 138).

This section applies to all present and future streets, except when they are repairable by the inhabitants at large, and whether they have been dedicated to the public or not: *per* QUAIN, J., in *St. Mary, Islington (Vestry) v. Barrett* (1874), L. R. 9 Q. B. 278; 38 J. P. 198; 26 Digest 276, 139, following *Hull Local Board of Health v. Jones* (1856), 1 H. & N. 489; 21 J. P. 37; 26 Digest 520, 2212. In a later case, JESSUP, M.R., said that the word "streets" as here used "clearly extends to places which are in all respects private, and over which the public have no right." And he added, "What is the Act for? It is a Public Health Act. The owners of these private courts and alleys are, of all the people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the legislature intended to except such places from the operation of the Act? I should say, if the Act were passed for anybody, it must have been to include those owners who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary

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precautions. If I were to interpret it by what I might think to be the mind of the legislature, I should suppose that the first people to be included would be the owners of these crowded courts and alleys over which the public have no street rights whatever, but which are intended to be used for the dwellings of the poor and are unprovided with what, according to modern science, is known to be absolutely necessary for their well being" (*Taylor v. Oldham Corporation* (1876), 4 Ch. D. 395; 26 Digest 270, 96). See also *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; 26 Digest 267, 72, where, though the owner of the soil of a road put up bars and took tolls from passengers, it was held that such road might yet be a "street," and *Walthamstow U. D. C. v. Sandell* (1904), 68 J. P. 569; 2 L. G. R. 835; 26 Digest 271, 105, where a *cul-de-sac* passage, giving access only to the back premises of five houses, was held to be a "street" within this section. In the latter case, BUCKLEY, J., said: "I have no doubt I have to see what sort of a passage this is, whether it is a private approach to a man's house,—his avenue leading up to his house from the street, or . . . a passageway rightly open to any member of the public who is going along an adjacent highway, and as to which DAVY, J., said, in *R. v. Goole L. B.*, 'there is nothing to show that the public cannot pass along it.'"

D. owned a house, the back premises of which had a door leading into an alley or lane which had been used for fifty years by the tenants of nine houses as an access, but there was no thoroughfare through it. It was held that there was evidence justifying a finding that this was a new street within the meaning of the Metropolis Management Acts, so as to make the owners of the houses abutting on it liable for the expenses of paving it (*Dodd v. St. Pancras (Tcestry)* (1869), 34 J. P. 517; 26 Digest 494, 2034).

**Projected
streets.**

In *Healey v. Bailey Corporation* (1875), L. R. 19 Eq. 375; 39 J. P. 423; 26 Digest 283, 153, it was held under the following circumstances that an owner of land in a suburb of a town who allowed the public to pass over his land, could not be compelled to pave and sewer under provisions similar to those contained in the text. He had in 1850 demised the coal under the land for six years to K., the owner of the adjoining land. In the lease was an agreement that a road, to be called *Union Street*, should within five years be made across the land under which the coal lay and K.'s land; that a sewer should be made under such land; that the lessor and lessee should, at their own cost, construct and repair so much of the said road and sewer as should extend along their respective lands; and that the road should be used as a public road for all purposes for ever thereafter, and should be maintained by each of the parties so far as the same should extend over his land until the same should be adopted by the surveyor of highways. The road and sewer were never made, and there was no dedication of a highway to the public by notice under the Highway Act. A brickfield and afterwards a colliery were opened on K.'s land, and gaps were opened in the fences to give access for carts and foot passengers. In 1869 posts and chains were placed across one of the openings, but after a few months the chains were removed. In 1870 K.'s land was sold, and in 1871 conveyed to the plaintiff in fee. In 1872 the local board called upon him to pave and sewer the alleged "street." It was held that the agreement in the expired lease had been abandoned, and could not be enforced, and that it did not amount to a dedication of a right of way to the public. In this case it will be seen that there never was anything which could be called a street. In another case H., lessee of land under a lease dated 1855, in 1865 laid out a proposed road across part of the land, and built six houses on one side of the road. In 1870 she abandoned her intention of making the road, and in 1874 she demised the remainder of the land, including the site of the abandoned road. In 1880 the urban authority called upon the representatives of H. to pave the road, and on their neglecting to do so entered on the land and began the work. It was held that the laying out of the proposed road was no dedication of a public right of way, and that the intention to use the land as a road having been abandoned, an injunction must go against the authority (*Hall v. Boodle Corporation* (1881), 44 L. T. 873; 26 Digest 283, 184). In 1907 plans were passed showing an intended new street with a southern outlet into a highway but no northern outlet. The plans showed the land on the east side of the street plotted out for building. The street was constructed, and kerbed and channelled on its eastern side with a footpath, at the cost of the owner to the satisfaction of the authority, who laid a water main in it. A gas main was also laid. By 1910

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the owner had disposed of all the plots except the two northernmost, and had granted to his lessees a right of way over the new street, and houses were built. In September, 1910, K. bought the two remaining plots and the north end of the new street so far as it was conterminous with the two plots, with a right of way over the new street up to the two plots, and erected a fence with an opening for gates across the new street in a line with the southern boundary of the two plots, thus enclosing the north end of the new street bought by him. The authority had not taken over the street or expended any public money upon it, but alleged that its entire length had been dedicated to the public, and threatened to pull down the fence. It was held, on the evidence, that the new street had not become a highway:—*Held, also*, that the byelaws and special Act of the authority dealt only with the width and level, and not with the length, of new streets, and therefore that, in the absence of an order under s. 17 of the P. H. A., 1907, *post*, p. 5043, the owner was entitled to deviate from the plans and to enclose the dead end of his private road (*Kirby v. Paignton U. D. C.*, [1913] 1 Ch. 337; 77 J. P. 169; 26 Digest 297, 286). See also *Sunderland Corporation v. Skinner*, on p. 4437, *post*; *Mackett v. Herne Bay Commissioners*, on p. 4437, *post*; *Rolls v. St. Mary, Newington (Vestry)*, W. N. (1873), 168; *Tarrant v. Woking U. D. C.*, [1914] 3 K. B. 796; 79 J. P. 22; 26 Digest 555, 2503, on p. 4436, *post*, and *Urban Housing Co., Ltd. v. Oxford Corporation*, [1940] Ch. 70; [1939] 4 All E. R. 211; 104 J. P. 15; Digest Supp.

A burn, having a public footpath on one side, was piped in, with the result that vehicles could be driven (though with difficulty) along its line from one street to another; but it was not intended that there should be any road, and no attempt had been made to form one:—*Held*, that the strip of land was not a street within somewhat similar provisions in a Scotch Act (*Dunfermline Town Council v. Rintoul*, [1911] S. C. 737).

R. agreed with an authority that when he used his land for building he would throw a strip eighteen feet wide into a road eighteen feet wide made by an adjoining owner along his boundary. Before he did so the authority called upon him as a frontager to join in sewerage and paving the original road; and, upon the frontager's default, the authority did the work. After apportionment, R., as he had agreed, threw eighteen feet into the road, and (though he was not bound to do so by his agreement) paved and sewered his strip. It was held that the original eighteen foot road was a "street" which the authority had the right to require R. to sewer, pave, etc. (*West Hartlepool Corporation v. Robinson* (1897), 62 J. P. 35; 77 L. T. 387; 26 Digest 275, 133).

In *Camberwell Corporation v. Dixon*, [1910] 1 K. B. 424; 74 J. P. 77; 26 Digest 277, 144, it was held that a metropolitan authority are not precluded from paving a street at the cost of the frontagers as a "new street," by the fact that it has been laid out or widened in contravention of some byelaw or statute.

In the case of a street down which the boundary between two districts runs, s. 150 does not seem to be applicable to the making up of the surface as a whole, though each council could probably make up the strip within its district and recover the expenses from frontagers upon its own side. See hereon *Mayor, etc. of Hornsey v. Birkbeck Freehold Land Society*, and cases cited therewith, on p. 4402, *post*. The L. G. B. expressed the opinion that there was no provision in the P. H. A., 1875, which would enable two councils to carry out a joint scheme for the making up of a street so situated at the cost of the owners. The boundary may be altered under Part VI of the L. G. A., 1933, *ante*, p. 920, with the object of getting over the difficulty.

See also *Newton v. Lambton Helton and Joicey Collieries, Ltd.*, [1937] 2 All E. R. 150; Digest Supp., where it was held that a local authority may not make an order taking over a street, after being made up to their satisfaction, if part of the street is outside their area; and the application to take over and the order cannot be severed so as to be valid so far as the street is within the authority's area.

It is a question of fact whether a piece of ground, e.g., a strip of pavement separated from the roadway of a street by posts, is or is not part of the street which may be dealt with under this section (*Bell & Sons v. Great Crosby U. D. C.* (1912), 77 J. P. 37; 26 Digest 540, 2386).

(c) *Repairable by the inhabitants at large*.—The words "repairable by the inhabitants at large" were not in the corresponding section (s. 69) of the P. H. A., by the 1848, but were added by First Public Health Supplemental Act, 1852, s. 13. The inhabitants at large.

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difficulty which arose in *Sunderland v. Herring* (1853), 17 J. P. N. 741, is thus obviated. There are, however, local Acts under which frontagers have been held liable for the expense of making up streets repairable by the inhabitants at large: see *Ashton-under-Lyme Corporation v. Pugh*, [1898] 1 Q. B. 45; 61 J. P. 788; 26 Digest 548, 2454; *Ledge v. Huddersfield Corporation*, [1898] 1 Q. B. 847, 859; 62 J. P. 357, 515; 26 Digest 549, 2459; *Portsmouth Corporation v. Smith* (1885), 10 App. Cas. 364; 49 J. P. 676; 26 Digest 519, 2209; *Crump v. Chorley Corporation* (1905), 72 J. P. 324; 98 L. T. 805; 26 Digest 520, 2210; *Stockport Corporation v. Cheetham* (1860), 24 J. P. 196; 26 Digest 549, 2462; *Rochdale Corporation v. Leach* (1910), 74 J. P. 89; 101 L. T. 881; 26 Digest 549, 2463; *Birkenhead Improvement Commissioners v. Sansom* (1876), 40 J. P. 406; 34 L. T. 175; 26 Digest 552, 2480; *Leeds Corporation v. Hauke*, Times, July 17th, 1897.

If a street is repairable by the inhabitants at large, there is no jurisdiction under this section. Therefore where a street was shown to have been a highway before 1835 (as to this date and its importance in this respect, see p. 1947, *ante*), it was held that the frontagers could not be made liable (*Rishton v. Haslingden Corporation*, [1898] 1 Q. B. 294; 62 J. P. 85; 26 Digest 543, 2416). And in the case of a highway dedicated since 1835, where from long user it was presumed that the requirements of ss. 84—92 of the Highway Act, 1835 (9 Halsbury's Statutes 97—104), had been complied with, the same result followed (*Leigh U. D. C. v. King*, *ante*, p. 1951; but see *Cababé v. Walton-on-Thames U. D. C.*, p. 1947, *ante*).

The words "repairable by the inhabitants at large" appear to be used in contradistinction to highways repairable by individuals or corporate bodies by prescription, *ratione tenuræ*, *ratione clausuræ*, or under some statute or statutory award, or highways repairable by no one. In the case of highways repairable by individuals there may, in case of default, be an ultimate liability upon the inhabitants (see Pratt on Highways (18th ed.), pp. 83, 84, and cases there cited as to roads made under turnpike and other local Acts); but it is submitted that for the purposes of this section at any rate such highways cannot be said to be repairable by them: cf. *Swansea Improvement and Tramways Co. v. Glamorganshire County Roads Board* (1880), 43 J. P. 798; 41 L. T. 583; 26 Digest 358, 835; *Gibson v. Preston Corporation* (1869), L. R. 5 Q. B. 218; 34 J. P. 342; 26 Digest 357, 834; *Austerberry v. Oldham Corporation* (1885), 29 Ch. D. 750; 49 J. P. 532; 26 Digest 267, 71; *Wallington v. White*, *ante*, p. 1950. As to what roads are repairable by the inhabitants at large, see pp. 1947 *et seq.*, *ante*; reference may also be made to the cases cited in the notes to s. 25 of the Town and Country Planning Act, 1932, *ante*, pp. 1949 *et seq.*

Owners of land adjoining a road which a local authority have agreed to take over as a highway repairable by the inhabitants at large, cannot by agreement between them and the authority confer jurisdiction to act under s. 150. See *Mayor, etc. of Folkestone v. Marsh*, cited on p. 4367, *ante*; but cf. *Mayor, etc. of Folkestone v. Rook*, *ante*, p. 4368.

An application to justices by a local board for the recovery of expenses from an owner under this section was dismissed on the ground that the street was a highway repairable by the inhabitants at large. The board some years later made an application against the same person for the recovery of further expenses subsequently incurred in respect of the same street. It was held by the Court of Appeal, reversing the decision of the Queen's Bench Division, that the adjudication of the justices that the street was a highway repairable by the inhabitants at large on the first application was beyond their jurisdiction, for they had only power to make or refuse an order for the payment of the expenses claimed; that, therefore, such adjudication did not estop the board from claiming the expenses claimed on the second application, and consequently that a magistrate could make an order for their payment (*R. v. Hutchings* (1881), 6 Q. B. D. 300; 45 J. P. 504; 26 Digest 533, 2326). This decision was followed by a Divisional Court in a case arising under a local Act similar in terms to the Private Street Works Act, 1892, *post*, p. 4848 (*Wakefield Corporation v. Cooke*, [1902] 1 K. B. 188; 66 J. P. 232), and also in a case arising under the Metropolitan Management Acts (*Scott v. Lowe* (1902), 66 J. P. 520; 26 Digest 497, 2054). The *Wakefield Case*, was however, appealed; and it was ultimately decided in the House of Lords that the principle of the decision in *R. v. Hutchings*, *supra*, was not applicable (*Wakefield Corporation v. Cooke*, [1904] A. C.

31; 68 J. P. 225; 26 Digest 543, 2419). See the notes to the Private Street Works Act, 1892, s. 7, *post*, p. 4853. Note to Section 150.

(d) **Part of such Street.**—It was held with reference to the Metropolis Management Acts, 1855 and 1862 (11 Halsbury's Statutes 889, 965), that, although the district board might have resolved that part only of a road should be repaired, yet as they had resolved that the whole should be repaired, there must be only one apportionment on all the owners along the entire road. Therefore, the surveyor having divided the road into four sections, and apportioned the cost of repairing each section amongst the owners of property in that section, it was held that the apportionments were bad, and unenforceable (*Whitchurch v. Fulham Board of Works* (1866), L. R. 1 Q. B. 233; 30 J. P. 229; 26 Digest 497, 2055). See also *Nash v. Giles* (1926), 91 J. P. 19; 43 T. L. R. 121; Digest Supp., decided under s. 19 of P. H. A., 1907, *post*, p. 5045.

The owners of a field adjoining a highway repairable by the inhabitants at large used it for building, and threw open to the highway a strip of land in front of the new houses. It was held that the houses with the strip of land in front of them formed a street within the meaning of the section, which the authority could compel the frontagers to pave, channel, and kerb, to their satisfaction (*Richards v. Kessick* (1888), 52 J. P. 756; 57 L. J. M. C. 48; 26 Digest 271, 102). See the observations on this case in *White v. Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; 26 Digest 276, 142, and *Property Exchange, Ltd. v. Wandsworth District Board of Works*, [1902] 2 K. B. 61; 66 J. P. 435; 26 Digest 277, 143; and *cf. Portsmouth Corporation v. Hall and Escott v. Newport Corporation*, *post*, p. 4419.

A "part of a street" may be such part as is not occupied by tram lines (*Standring v. Bezhill Corporation* (1909), 73 J. P. 241; 7 L. G. R. 670; 26 Digest 539, 2385).

(e) **Sewered, Levelled, etc. to the satisfaction of the Urban Authority.**—What works Where an owner had, with the sanction of the Metropolitan Board of Works, laid a sewer in a new street, and the district board afterwards took up this sewer and laid another for the drainage of the neighbourhood, it was held that the owner could not be charged with any portion of the cost of the second sewer (*Fulham District Board of Works v. Goodwin* (1876), 1 Ex. D. 400; 41 J. P. 134; 41 Digest 30, 223. See also *East Barnet U. D. C. v. Stacey*, [1939] 2 K. B. 861; [1939] 2 All E. R. 621; 103 J. P. 237; Digest Supp.). Where a sewer had been laid in a street by private persons, and had vested in the urban authority under s. 13 (now repealed) (13 Halsbury's Statutes 631), it was held that the authority could not require the owners to lay a new sewer when a new system of drainage had to be adopted (*Bonella v. Twickenham L. B.* (1887), 18 Q. B. D. 577; affirmed, 20 Q. B. D. 63; 52 J. P. 356; 41 Digest 19, 151). See observations on those cases in *Simmonds v. Fulham Vestry*, [1900] 2 Q. B. 188; 64 J. P. 548; 26 Digest 279, 163.

An objection, that the cost of providing new gullies or altering the position of existing gullies and altering levels in streets which had been laid out by an estate developer in accordance with a plan approved by the authority as complying with the byelaws as to widths of streets, etc., should not be charged to the frontagers but should be charged to the ratepayers of the district as the gullies and connecting pipes were and always had been part of the drainage system and formed no part of the carriageways of the streets, was successfully maintained in *East Barnet U. D. C. v. Stacey*, *supra*. See also *Re Jesty's Avenue, Broadway, Weymouth*, [1940] 2 K. B. 68; [1940] 2 All E. R. 634; 104 J. P. 279.

It does not, however, follow because there is in a street a sewer which has become vested in the authority, that the street is sewered "to their satisfaction" so as to prevent their requiring it to be sewered under this section. In *Barrow-in-Furness (Mayor, etc. of) v. Dawson* (1890), 13 M. C. C. 13, SMITH, J., held that it was a question of fact to be decided on the evidence whether an authority had expressed satisfaction with, or were in fact satisfied with, the sewer as originally constructed; but he accepted the proposition laid down in the *Twickenham Case*, that "if after the lapse of a reasonable time after the vesting of sewers in a corporation they had done nothing and expressed no view on the subject, it must be taken to be conclusive as a matter of fact that at the time the sewer was originally constructed they were satisfied with it for the purpose for which it was then used." And see *Walthamstow L. B. v. Staines*, [1891] 2 Ch. 606; 26 Digest 538, 2372. A road having been made

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by the owners of a building estate about 1859, a 12-inch pipe was laid by them along it from end to end. Houses were built from time to time in the neighbourhood of the road, and some of their owners connected their drains with the 12-inch pipe; but some of the earlier houses had a separate system of drainage into cesspools in a wood at the back of their premises. Drainage into the 12-inch pipe commenced at least as early as 1876. The pipe discharged into a culvert, and thence into a river. The plaintiffs' predecessors, the W. local board, were constituted in 1878, and could in that year have put into operation the provisions of this section (s. 150). There was evidence that in 1882 their surveyor knew of at least one connection of drains with this pipe, and that complaint having been made in 1892 as to the outfall into the river, the plaintiffs proposed a scheme by which the drainage was to be diverted from the 12-inch pipe and carried into septic tanks. It was held on the evidence as a finding of fact that the authority must be taken to have been satisfied with the sewer, and could not now re sewer the road at the cost of the frontagers under s. 150 (*Wilmslow U. D. C. v. Sidebottom* (1906), 70 J. P. 537; 5 L. G. R. 80; 26 Digest 528, 2265). *Semble*, on the authority of *Bonella v. Twickenham L. B.*, *ante*, p. 4395, when a sewer has thus existed for a long period of years, it must be inferred that the sewer has been accepted by the authority as a sewer laid to their satisfaction (*ibid.*).

In *Hornsey L. B. v. Davis*, [1893] 1 Q. B. 756; 57 J. P. 612; 26 Digest 528, 2264, the owners of a building estate, predecessors in title of the defendant, deposited plans which were approved by the authority, showing a road to be drained by an intended sewer crossing the New River; and an agreement was made by the New River Company with the owners to divert the New River for the purpose of laying the sewer according to the plans. The sewer was laid as far as the New River, where it stopped, and the New River never was diverted according to the agreement, so that the sewer was never completed and had no outfall; but the work done was from time to time inspected during its progress by a servant of the authority, who authorised the covering in of the various sections, and made reports to the authority, who never expressed any dissatisfaction. The sewer was never used, and in five years became out of repair, whereupon the authority gave notice to the frontagers to construct a new sewer, and in default themselves constructed it. It was held that the authority had power to accept and did accept the original sewer, although it had no outfall and was incapable of being used as a sewer, and that the road having once been sewered to their satisfaction the expenses of constructing the new sewer were not chargeable on the frontagers.

A private street is not necessarily "sewered" within the meaning of this section where the houses in it are served either singly or in groups by private drains or sewers constructed by the several owners of the houses, but not forming one system. Accordingly, the authority may, although these private sewers are vested in them under s. 13 (13 Halsbury's Statutes 631), require the frontagers to sewer the street, unless they have, either expressly or by implication, determined that it is already sewered to their satisfaction, in which case their powers are no longer exercisable, and any new sewers required must be provided at their expense under ss. 15, 18 (*op. cit.* 632, 634) (*Handsworth D. C. v. Derrington*, [1897] 2 Ch. 438; 61 J. P. 518; 26 Digest 528, 2268). This decision is in accordance with an earlier one (*Handsworth L. B. v. Taylor* (1893), [1897] 2 Ch. 442 n; 58 J. P. 9 n), where ROMER, J., said: "The owner of houses wished to exercise his right of draining those houses into the nearest sewer in the district, and what he did was to form a drain for the houses which, for his purposes, should drain them into the nearest sewer, and that he did. That was approved of and sanctioned by the board; but, looking at the circumstances of the case, I am satisfied that it was not intended by the owner or by the board, at the time, that this drain should be regarded as or accepted as a sewer of part of the street in which these houses were. What was done was merely a drainage of the particular houses by one drain instead of several into the nearest sewer. The board, in my opinion, never did approve of the drain as a sewer to their satisfaction for any part of this street." See also observations of CHANNELL, J., in *Rishton v. Haslingden Corporation*, [1898] 1 Q. B. 294; 62 J. P. 85; 26 Digest 543, 2416, and *Hanwell U. D. C. and Smith, In re* (1904), 68 J. P. 496; 26 Digest 531, 2300.

Up to 1881 the soil sewage in a private street was drained into cesspools, and the surface water was carried by channels constructed by the owners of the adjoining

land into a river. In 1881 the authority made a contract for the construction of soil and surface water sewers in the street, but subsequently decided to omit the surface water sewer. The soil sewer was constructed at the expense of the rates, the surface water continuing to be carried away by the channels. In 1891 the authority resolved to serve notices under s. 150, requiring the frontagers to pave, metal, channel, and make good the street; but before the notices were served they accepted a guarantee from twelve frontagers to put and maintain the road in repair. In 1904 the authority served notices on the frontagers requiring them to provide a surface water sewer, and, on the frontagers making default, themselves provided the sewer. On proceedings to recover the expenses, it was objected that the street had been sewered to the satisfaction of the authority prior to 1904; but the justices found as a fact that it had not. It was held that there was evidence upon which they could arrive at that conclusion (*Bloor v. Beckenham Urban District Council*, [1908] 2 K. B. 671; 72 J. P. 325; 26 Digest 529, 2269).

(But now see, in connection with these cases, Part II. of the P. H. Act, 1936, *ante*, pp. 21 *et seq.*).

In the metropolis, when a new street is paved at the expense of the owners, the Works other authority is bound afterwards to keep it in repair, whether it has become a highway than or not (*R. v. Hackney District Board of Works* (1873), L. R. 8 Q. B. 528; 26 Digest 490, 2007; *St. Giles, Camberwell (Vestry of) v. Hunt* (1887), 52 J. P. 132; 56 L. J. M. C. 65; 26 Digest 490, 2008), and in *Walhamstow L. B. v. Staines, supra*, CHITTY, J., appears to have held generally that the powers conferred by this section (s. 150) are exercisable once only: see also *Derby (Mayor, etc. of) v. Grudgings*, [1894] 2 Q. B. 496; 58 J. P. 685; 26 Digest 535, 2341, *per* CHARLES, J., and *Smith v. Croydon L. B.* (1868), 32 J. P. 709. But in *Barry and Cadoxton L. B. v. Parry*, [1895] 2 Q. B. 110; 50 J. P. 421; 26 Digest 529, 2274, it was held by Lord RUSSELL, C.J., and CHARLES, J., that an authority may call upon the frontagers to do any of the works (except sewerage, as to which see the cases cited, *supra*) mentioned in this section from time to time, as occasion may require, unless and until the street has been declared to be a highway repairable by the inhabitants at large, notwithstanding that such work may have been previously done at the expense of the frontagers to the satisfaction of the authority. Where, however, all the works required by the section have been done the local authority may be compelled by the frontagers to declare the road a highway repairable by the inhabitants at large under s. 82, P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1153.

Where a local authority had in pursuance of an agreement constructed a road outside their district and subsequently after their district had been extended to include the road served notices upon the frontagers under this section, it was held that the fact that they had themselves constructed the road did not estop them from saying that the road was not sewered, metalled, etc., to their satisfaction (*Sunderland Corporation v. Priestman*, [1927] 2 Ch. 107; 26 L. G. R. 64; Digest Supp.).

The power to "level" given by this section only attaches where the particular street requires to be levelled, looking at it as an isolated street. Where, therefore, the local board required the owner of a house to level the part of a street upon which his house fronted, so as to make it on a level with other streets, it was held that they could not recover from him the expenses incurred by them in doing the work (*Caley or Cary v. Kingston-upon-Hull L. B.* (1864), 5 B. & S. 816; 29 J. P. 116; 26 Digest 527, 2261). See, however, in districts where the Private Street Works Act, 1892, is in force, s. 9, thereof, *post*, p. 4358.

An authority have no power when making up a street under this section to alter the respective widths of the carriageway and footway of the street (*Robertson v. Bristol (Mayor, etc. of)*, [1900] 2 Q. B. 198; 64 J. P. 389; 26 Digest 527, 2259; *Wandsworth Borough Council v. Golds*, [1911] 1 K. B. 60; 74 J. P. 464; 26 Digest 489, 2001), except in cases where the relative proportions of carriageway and footway have been left undetermined by the owner of the soil (*Stretford U. D. C. v. Manchester, etc. Rail. Co.*, *ante*, p. 4391: *per* the VICE-CHANCELLOR of the County Palatine of Lancaster). Where s. 35 of the P. H. A., 1925, Vol. V., *post*, has been adopted, however, any alteration may be made in the respective widths provided that any extra expense thereby incurred is borne by the urban authority and not charged upon the frontages. This section is as from April 1st, 1930, of universal Alteration of roadway and pavement.

Note to Section 150. application in all rural districts by the county council under Sched. I., Pt. I., of the L. G. A., 1929; Vol. V and 10 Halsbury's Statutes 975. See the notes to the Private Street Works Act, 1892, s. 6, *post*, p. 4851.

The authority have not the right to make what in fact are physically two streets, separated by a wall built across the junction, into a single street by the removal of the wall, even after taking over both streets (*Urban Housing Co., Ltd. v. Oxford Corporation*, *post*, p. 4729).

Widenings. It will be observed that the authority are not empowered to call upon the owners to widen a private street; and notices which contain such a requirement would probably be held to be invalid. As to the circumstances under which the authority could themselves undertake a widening, see notes to s. 154, *post*, p. 4425.

Maintenance. The L. G. B. held in a case which came before them that notices which required owners to maintain a street for a period after it was made up were of doubtful validity, and called in question the power of the authority to proceed upon default of the owners. The Board pointed out that the owners might have been willing to do all the works which they could be legally required to do under the section.

Lighting. The previous Acts did not mention "lighting." Under this section the frontagers can only be required to provide "means of lighting," which presumably means structural works only, such as pipes or wires, lamps, etc., and does not include a supply of gas, etc. Under s. 161, *post*, p. 4445, the authority may, at the cost of the general rate, provide such lamps, etc. as they think necessary for lighting the streets in their district. They may therefore provide lamps and other apparatus in private streets instead of using their powers under s. 150. The authority may also, if they think fit, and if the circumstances warrant such a course, defray the cost of lighting private as well as public streets.

The notice to pave, etc. (f) **Notice to pave, etc.**—Note that the notice may be given to the owner or occupier, but that owners only are responsible for the expenses if recovered summarily. Unless notice has been given to the owner or occupier to do the work, the expenses cannot be recovered from the former (*Jarrow L. B. v. Kennedy* (1870), L. R. 6 Q. B. 128; 35 J. P. 248; 26 Digest 523, 2241; and see also *Pierson v. Altrincham U. D. C.* (1917), 81 J. P. 149; 15 L. G. R. 228; 21 Digest 299, 1078).

An authority incurred expenses in paving a street without having served a notice under this section upon the then owners of certain premises. They now claimed in an action against the present owners a declaration that the expenses were a charge on the premises (see s. 257, *post*, p. 4489). A predecessor in title of the defendants had paid to the authority an instalment of the expenses. It was held that the authority were not entitled to the declaration claimed, inasmuch as service of the notice was a condition precedent to liability on the part of the defendants, and the payment by their predecessors could not operate as a waiver of the omission (*Farnworth L. B. v. Compton* (1886), 34 W. R. 334; 26 Digest 524, 2243; and see *Bacup (Corporation of) v. Smith*, *ante*, p. 709).

In January a local board passed a resolution for the paving and sewerage of a street, and on May 11th notice was served on P. & Co., requiring them to pave, sewer, etc. P. & Co. had been owners of land abutting on the street, but by a conveyance of April 27th had conveyed their estate to the respondent. The board had no notice of this conveyance. In an action by the board to recover the paving expenses from the respondent, it was held that P. & Co. were not at the time of the service of the notice either owners or occupiers of the premises, and that as the proper steps prescribed by the section had not been taken, the respondent was not liable (*Wallsend L. B. v. Murphy* (1889), 61 L. T. 777; 6 T. L. R. 29; 26 Digest 524, 2247).

According to a dictum of KEKEWICH, J., the notice must be served on every frontager, and, if it is not, the expenses cannot be recovered even from those who have been served (*Handsworth U. D. C. v. Derrington*, [1897] 2 Ch. 438; 61 J. P. 518; 26 Digest 528, 2268). This dictum was not followed in *Sunderland Corporation v. Gray*, [1928] Ch. 756; 91 J. P. 52; Digest Supp. In that case notices had been served upon all the frontagers except one, and in proceedings for enforcing a charge on premises in respect of which notice had been served, it was held that there is no condition precedent implied in s. 150 that before a charge can be enforced all the front-

agers must have been served with notice. The expense of making up that part of the road fronting upon the premises of the person who was not served cannot, however, be apportioned upon the frontagers who have been served and must be borne by the authority. *Cf. Leeds Corporation v. Armitage* (1899), 43 Sol. J. 263. In that case notices were given to all the frontagers in a street save one, and the omission was not discovered until the work had been begun. The work was then stopped and notice given to the frontager, who did nothing, and the authority completed the work. It was held that he could not be made liable as he had never had the opportunity of doing the work, as the statute required. In this case it will be observed that the proceedings were against a frontager who had not been served until part of the work had been done.

For definition of owner, see s. 4, *ante*, p. 4335. As to authentication and service of the notice, see ss. 266, 267, *post*, pp. 4494—5.

Service of the notice on a person who is *de facto* in receipt of the rent, is a service on the owner sufficient to satisfy the requirements of this section (*Peek v. Waterloo and Seaforth L. B.* (1863), 27 J. P. 807; 33 L. J. M. C. 11; 26 Digest 524, 2246; and see *St. Helen's (Mayor of) v. Kirkham*, where an agent for the collection of rents was held to be an owner within the meaning of this section, and other cases cited therewith on p. 709, *ante*). Section 267, *post*, p. 4495, which contains provisions as to service of notices, was intended to aid those who have to serve notices, and was not meant to prevent a notice, otherwise perfectly good, from being good. Therefore, service at an owner's place of business, by delivering and reading it to his clerk, was held a good service (*Mason v. Bibby* (1864), 28 J. P. 121; 33 L. J. M. C. 105; 38 Digest 176, 182; and see *Woodford U. D. C. v. Hemwood* (1899), 64 J. P. 148; 26 Digest 543, 2418).

As to what work an authority may require frontagers to do, see preceding note.

As some difficulty had been experienced in framing notices under the corresponding P. H. A., 1848, s. 69 (*Mayor of Blackburn v. Parkinson* (1858), 23 J. P. 262; 28 L. J. M. C. 7; 26 Digest 551, 2477; *Bayley v. Wilkinson* (1864), 16 C. B. (n.s.) 161; 26 Digest 525, 2251); Local Government Act, 1858 (Amendment) Act, 1861, s. 17, enacted that the form of notice in Sched. A. to that Act, or one to the like effect, might be used. The form of notice under this Act will be found in Sched. IV., Form G. (13 Halsbury's Statutes 776), although no reference is made to it in the text.

In *Acton L. B. v. Lewsey* (1886), 11 App. Cas. 93; 50 J. P. 708; 26 Digest 529, 2276, Lord BRAMWELL said: "Upon the point which occurred to me, that the board had no right to order the way in which the work should be done, I still have sufficient doubt to recommend local boards, when they do give orders that work shall be done, not to prescribe the mode in which it shall be done, but to content themselves with saying that, if done in a particular way, it will be satisfactory to them." In that case, however, the provisions of s. 317 and Sched. IV., Form G., *post*, p. 4524, and 13 Halsbury's Statutes 776, were not brought to the notice of the court, and it is submitted that the dictum of Lord BRAMWELL is of doubtful authority. A notice which is not in the form set out in Sched. IV., *post*, p. 4524, but merely refers in general terms to the provisions of the section and does not give particulars of the work to be done, or mention that plans and sections are deposited for inspection, is not sufficient (*Stourbridge U. D. C. v. Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3; 26 Digest 525, 2252).

A corporation paved three roads under a local Act and sued the frontagers for the expenses. One road was a "back road" and two were "cross roads" (as defined by the Act), but the notice called them all "back roads":—*Held*, that the mistake could not have misled the frontagers, and that, therefore, the notice was sufficient (*Blackburn Corporation v. Sanderson*, [1902] 1 K. B. 794; 66 J. P. 452; 26 Digest 548, 2452).

See *Acton L. B. v. Lewsey*, *Kershaw v. Sheffield Corporation*, and *Acton U. D. C. v. Watts*, p. 4410, *post*, as to the effect of an authority carrying out work not identical with that specified in their notice.

As to the time allowed by the notice for doing the work, see note (*hh*), *post*, p. 4405.

A notice is not bad because it may involve the entering upon the soil of another person to execute the work comprised in it (*West Hartlepool Corporation v. Robinson*

Note to
Section 150.

Note to Section 150. (1897), 62 J. P. 35; 77 L. T. 387; 26 Digest 275, 133. And see *Lancaster v. Barnes U. D. C.*, [1898] 1 Q. B. 855; 62 J. P. 405; 36 Digest 236, 748).

A notice which is *ultra vires* as to part, but good as to the residue, may be enforceable in respect of the valid portion. Thus a notice to flag a street, referring to a plan which included a garden not dedicated to the public, was held to be valid so far as it applied to the street and enforceable accordingly (*Hall v. Potter* (1869), 34 J. P. 515; 39 L. J. M. C. 1; 26 Digest 526, 2255).

Notice was given to the appellant and five others requiring them to sewer, pave, etc. the parts of a street in front of their premises within a specified time. Five of the owners executed the works, but the appellant made default. The board thereupon did the work, and, the surveyor having made an apportionment, gave her notice accordingly. It was held that the board were not bound before executing the work to give the appellant a fresh notice specifying the particular works remaining to be done by her (*Simcox v. Handsworth L. B.* (1881), 8 Q. B. D. 39; 46 J. P. 260; 26 Digest 524, 2242). In this case it was argued that the notice was not a separate notice to each owner to do the work opposite his own premises, but was a notice to all the owners in respect of the entire work. But *CROVE, J.*, in delivering the judgment of the court, said it was not meant that each owner may be called upon to execute the whole. And see *Wakefield Sanitary Authority v. Mander* (1880), 5 C. P. D. 248; 44 J. P. 522; 26 Digest 530, 2282, the facts of which are stated in note (n), *post*, p. 4414; and *Macclesfield Corporation v. Macclesfield Grammar School*, [1921] 2 Ch. 189; 26 Digest 526, 2254; *Sunderland Corporation v. Gray*, [1928] Ch. 756; 91 J. P. 52; Digest Supp., in note (hh), *post*, p. 4405, and *Cardiff Corporation v. Cardiff Pure Ice and Cold Storage Co., Ltd.* (1930), 95 J. P. 11; 29 L. G. R. 29; Digest Supp. But see, on the other hand, *Handsworth U. D. C. v. Derrington*, [1897] 2 Ch. 438; 61 J. P. 518; 26 Digest 528, 2268; and *Lancaster v. Barnes U. D. C.*, [1898] 1 Q. B. 855; 62 J. P. 405; 41 Digest 40, 296, where *WILLS, J.*, said: "The notice is a general one: it is a notice to all the owners collectively to make up the street generally. No one ever saw a notice under s. 150 calling upon each owner to make up that part only which was opposite his own house." See also *Leeds (Lord Mayor, etc. of) v. Armitage, ante*, p. 4399, and *Denman v. Finchley U. D. C.*, p. 4405, *post*.

No provision is made in this Act for the owners to object to the notice. Such a provision exists in the Private Street Works Act, 1892 (see *post*, p. 4848), and was to be found also in Public Works (Manufacturing Districts) Act, 1863, s. 10 (see *R. v. Livesey* (1870), 34 J. P. 645; 22 L. T. 470; 26 Digest 550, 2466, as to the result of not taking objection at the proper time under that section). It is, however, arguable that an appeal will lie to quarter sessions under s. 7 of the P. H. A., 1907, see that section and notes thereto, at p. 5039, *post*.

Where a local board had duly proceeded under the Act, and had sewered, etc. a new street, and no notice had been given by an owner that he disputed the apportionment, it was held that it was still open to him to dispute his liability, and to show that the street was a highway repairable by the inhabitants at large (*Hesketh v. Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149; 26 Digest 533, 2324; and see other cases cited therewith on p. 4408, *post*).

Premises
extra com-
mercium.

(g) **Premises Fronting, or Adjoining, or Abutting.**—As "ownership" is defined (s. 4, *ante*, p. 4335) by reference to receipt of rack-rent, "where land is incapable of yielding a rack-rent by reason of its being subjected to some public user, the owner is not liable; for instance, where it has been dedicated as a highway, or where a church has been built upon it which has been consecrated according to English law for public worship, or where it has been appropriated by Act of Parliament to some public purpose. But, when the incapacity is created in favour of an individual or of a particular class of persons, then the owner does not escape liability; for instance, where the owner has covenanted not to use the land for any purpose of profit, or where he has voluntarily devoted it to a purpose which is inconsistent with the receiving of rent . . . The reason for the distinction seems to be that, in the one case, nothing short of an Act of Parliament can restore the land to its capacity to yield a rent, whereas, in the other case, the capacity can be restored by the mere act of the parties who for the time being have destroyed it" (*per BIGHAM, J.*, in *Hampstead Corporation v. Midland Rail. Co.*, [1904] 2 K. B. 802; 68 J. P. 574; affirmed, [1905] 1 K. B. 538; 69 J. P. 133; 26 Digest 493, 2026). The premises in

question in the following cases were held to fall within the first category : *Angell v. Paddington Vestry*, ante, p. 705 ; *Plumstead Board of Works v. British Land Co.*, ante, p. 706, and post, p. 4405 ; *G. E. Rail. Co. v. Hackney Board of Works*, ante, p. 706 ; *London C. C. v. Wandsworth Borough Council*, ante, p. 708 ; *Macey v. Executors of James*, ante, p. 706. The premises in question in the following were held to fall within the second category : *Bowditch v. Wakefield L. B.*, ante, p. 708 ; *Pound v. Plumstead Board of Works*, ante, p. 706, and post, p. 4404 ; *Wright v. Ingle*, ante, p. 705 ; *St. Giles, Camberwell v. London Cemetery Co.*, ante, p. 708 ; *Re Christchurch Inclosure Act*, *Meyrick v. Att.-Gen.*, ante, p. 707 ; *Hornsey U. D. C. v. Smith*, ante, p. 708 ; *Hackney Corporation v. Lee Conservancy Board*, ante, p. 708 ; *Hampstead Corporation v. Midland Rail. Co.*, ante, p. 707 ; and *Herne Bay U. D. C. v. Payne*, ante, p. 709. *Angell v. Paddington*, supra, was a case of a church, and *Wright v. Ingle*, supra, of a Wesleyan chapel ; but churches and chapels are for the purposes of this section expressly provided for by s. 151, post, p. 4420.

For definition of *premises*, see s. 4, ante, p. 4335. The term includes *land*. A Decisions as railway in a metropolitan district was carried across a new street by an arch. On to railway one side of the street the railway was carried forward on arches, and on that side property. a strip of land, left open for the purpose of repairing the arches, abutted for ten feet on the street. On the other side the railway was carried forward on an embankment ; the sloping part of the embankment abutted on the street about thirty feet, and at the foot of the embankment were open spaces also abutting on the street, left for the purpose of allowing for slips of the embankment. It was held that the railway company were liable to contribute to the expenses of paving the street as owners of *land* abutting on it (*Higgins v. Harding* (1872), L. R. 8 Q. B. 7 ; 37 J. P. 677 ; 26 Digest 494, 2033). This case may be usefully compared with *L. B. and S. C. Rail. Co. v. St. Giles, Camberwell* (1879), 4 Ex. D. 239 ; 26 Digest 494, 2031. In that case a line of railway was situate in a deep cutting at a place where a road was carried across it on a bridge. The bridge was supported on stone piers erected on the slopes of the cutting. It was held that neither the railway under the bridge nor the slopes of the cutting could be said to abut on the road. Where a railway ran in a cutting alongside a new street which the vestry were about to pave, being separated from it by a wall, through which there was no communication between the street and the railway, it was held that the railway *bounded* or abutted upon the street (*L. & N. W. Rail. Co. v. St. Pancras (Vestry)* (1868), 17 L. T. 654 ; 26 Digest 493, 2030 ; followed in *Caledonian Rail. Co. v. Magistrates of Edinburgh* (1901), 3 F. (Ct. of Sess.) 645). All these cases as to railway cuttings were discussed and approved by the House of Lords in a case where a railway company carried a road over a deep cutting by means of a bridge. The road having been paved by the board of works as a new street, the company were called upon to contribute to the cost of paving. It was held that the parapets of the bridge, though the property of the company, were not land of which they were "owners" for the purposes of the section ; and that the slopes and bottom of the cutting did not "abut on or bound" the new street (*G. E. Rail. Co. v. Hackney District Board of Works* (1883), 8 App. Cas. 687 ; 48 J. P. 52 ; reversing 9 Q. B. D. 412 ; 46 J. P. 532 ; 26 Digest 494, 2032). The decision of the House of Lords as to the parapet walls may perhaps be regarded as based on an application of the maxim *de minimis non curat lex*, for the decision in *L. & N. W. Rail. Co. v. St. Pancras*, supra, was approved. (See hereon *Hackney Corporation v. Lee Conservancy Board*, [1904] 2 K. B. 541, per COLLINS, M.R., at p. 552 ; 68 J. P. 485 ; 26 Digest 493, 2025).

The decision in the *Great Eastern Case* was distinguished in *Cameron v. Caledonian Rail. Co.* (1904), 6 F. (Ct. of Sess.) 763 ; 26 Digest 550, a. There by a local Act, liability for paving a street was imposed upon all "lands or heritages" in it or fronting or adjoining both sides of the line thereof. A railway company, in order to carry their line under the street at right angles, bought and demolished houses on each side of the street ; they then excavated the ground to form a cutting, and carried the roadway across on a bridge ; this bridge with its parapets and steps leading down to a station in the cutting, was the property of the company. It was held that the company were owners of property "adjoining" the street.

Where the Private Street Works Act, 1892, is in force, see s. 22 thereof, post, p. 4868, for special provisions as to railway property.

**Note to
Section 150.**

Premises out-
side district.

A local authority sought to recover from certain owners apportioned expenses incurred in the execution of works in a road not repairable by the inhabitants at large. The boundary of the authority's district ran along the kerb of one footpath, the carriageway and the footpath on the south side being within the authority's district, and the footpath on the north side being in the neighbouring urban district. The premises of the owners in question abutted on the footpath on the north side, and were wholly within the neighbouring district. The works were executed on the roadway and on the footpath on the south side; and it was sought to make the owners in question equally liable with the frontagers on the south side for the expense of making up the roadway. It was held that the authority had no power to apportion any part of the cost on frontagers not within their district (*Mayor, etc. of Hornsey v. Birkbeck Freehold Land Society*, [1906] 1 K. B. 521; 70 J. P. 140; 26 Digest 522, 2229). See also *Newton v. Lambton, Fletton and Joicey Collieries, Ltd.*, cited *ante*, p. 4393. See *R. v. Cheshire J.J.* (1909), 73 J. P. 499; 101 L. T. 683; 26 Digest 542, 2403, for a case where part of a street lay in a contributory place to which s. 150 had not been applied by order of the L. G. B. Cf. also *R. v. Warner* (1858), 27 L. J. M. C. 144; *Shoreditch Borough Council v. Wakeham* (1905), 69 J. P. 239. The L. G. B. expressed the opinion that there is no provision in the P. H. A., 1875, which would enable two councils to carry out a joint scheme for the making up of a street so situated at the cost of the owners. The boundary may be altered under Part VI. of the L. G. A., 1933, *ante*, p. 920, with the object of getting over the difficulty.

Premises
"in" or
"forming"
a street.

A local Act empowered commissioners to pave streets and recover the expenses by rates from the occupiers of houses, etc., "situated or being within any of the streets" in the district. It was held that houses and buildings in a yard communicating with a street by a covered gateway, which houses and buildings abutted on houses in the street, were situated *within the street* so as to be liable to the rates (*Buddleley v. Gingell* (1847), 1 Exch. 319; 11 J. P. 838; 26 Digest 493, 2028). This decision was followed in *London School Board v. St. Mary, Islington (Vestry of)* (1875), 1 Q. B. D. 65; 40 J. P. 310, 26 Digest 493, 2029. In that case the school board were charged as owners of a school-house which did not immediately front the street, but stood back some seventy feet in a large yard, the whole area being about 29,500 square feet. There was a row of eleven small houses with gardens at the back of them between the yard and the street; but the only access to the school was by a private passage which ran along one side of the last house and garden into the yard, with gates opening from the street in question, the width of the passage being twenty feet and the length about sixty-four feet. It was held that the school-house, though not actually one of the houses "forming" the street, yet practically formed part of it, so as to render the board liable as owners for the paving expenses. The court held that benefit of access to the street was the foundation of the liability. But an opinion was expressed that this principle would not apply to the case of an old-established court, the access of which was common to the public and open to every one who liked to go in. The last-mentioned case was decided under the rather different words of the Metropolis Management Acts. It was held in *Altrincham U. D. C. v. O'Brien* (1927), 91 J. P. 149; Digest Supp., that the question depends on what is to be considered as the close. In that case a house and grounds facing one road and a field adjoining facing a second road were held to be all one close at the time of the making up of the second road.

At common law and still, subject to the impingement on this right of the Restriction of Ribbon Development Act, 1935, *ante*, p. 2001, the owner of land adjoining a highway has a legal right of access to it at any point where it adjoins his premises. See *St. Mary, Newington (Vestry of) v. Jacobs* (1871), L. R. 7 Q. B. 47; 36 J. P. 119; 26 Digest 325, 587; *Marshall v. Ulleswater Co.* (1871), L. R. 7 Q. B., at p. 172; 36 J. P. 583; 26 Digest 332, 637; *Chaplin v. Westminster (Mayor, etc. of)*, [1901] 2 Ch. 329; 65 J. P. 661; 26 Digest 333, 649; *Rowley v. Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97; 26 Digest 308, 407, and *Cobb v. Saxby*, [1914] 3 K. B. 822; 83 L. J. K. B. 1817; 26 Digest 333, 640. See also *Ramuz v. Southend L. B.* (1892), 67 L. T. 169; 26 Digest 333, 639; *Peache v. Wimbledon L. B.* (1893), Times, July 17th, December 18th; in C. A., Times, April 23rd, 1895; *Att.-Gen. v. Furness Rail. Co.*, Times, July 15th, 1897; *Cobb v. Saxby*, [1914] 3 K. B. 822; 111 L. T. 814; 26 Digest 333, 640; *East Riding of Yorkshire C. C. v. Proprietors of Selby Bridge*,

[1925] Ch. 841; 133 L. T. 628; 26 Digest 571, 2630; and as to point of access to an occupation road, see *Petty v. Parsons*, [1914] 2 Ch. 653; 84 L. J. Ch. 81; 19 Digest 118, 784. As to vehicles crossing over pavements, see *St. Mary, Newington v. Jacobs* (1871), L. R. 7 Q. B. 47; 36 J. P. 119; 26 Digest 325, 587, and *Rowley v. Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97; 26 Digest 308, 407; *Curtis v. Geeves* (1930), 28 L. G. R. 103; Digest Supp.; *Marshall v. Blackpool Corporation*, [1935] A. C. 16; 98 J. P. 376; Digest Supp., and s. 18 of the P. H. A., 1907, *post*, p. 5044.

**Note to
Section 150.**

There can be no liability under s. 150 if intervening land of a third person precludes possibility of access to the street; but, if there be no intervening strip, the fact that the street is private (and therefore cannot be used as of right unless or until it becomes a highway) appears to afford no defence (*Walthamstow U. D. C. v. Sandell*, *infra*; cf. *Moubray, Rowan and Hicks v. Drew*, [1893] A. C. 295; 26 Digest 518, b).

Possibility of
access.

Paving expenses must be apportioned among all the owners of premises fronting, adjoining, or abutting on the street in proportion to the frontage, without any reference to direct or consequential benefit, which the Act assumes to be proportioned to the frontage. Therefore, a railway and canal company whose premises lay along one side of a street were held liable to pay their proportion of the expenses, although they had no immediate access to the street (*R. v. Newport L. B.* (1863), 3 B. & S. 341; 26 Digest 530, 2281). So, too, the owner of ground at the end of a street forming a *cul-de-sac* was held liable under a local Act to pay the expenses of paving, notwithstanding that a wall divided his property from the street, which wall, however, he might at any time have removed wholly or partially so as to open access to the street (*Manchester (Mayor, etc. of) v. Chapman* (1868), 32 J. P. 582; 37 L. J. M. C. 173; 26 Digest 332, 633; see also *Newport Sanitary Authority v. Graham*, *infra*; *Dodd v. St. Pancras Vestry* (1869), 34 J. P. 517; 26 Digest 494, 2034; *Sheffield v. Fulham District Board of Works* (1876), 1 Ex. D. 395; 26 Digest 272, 116). In another case, premises facing W. street were divided from D. street by a small stream, but were connected with it by two bridges over the stream. All communication with the street could be closed by gates. One of the bridges had been moved and reinstated by the owner of the premises. It was held that the premises fronted, adjoining, or abutted on D. street (*Wakefield L. B. v. Lee* (1876), 1 Ex. D. 336; 41 J. P. 54; 26 Digest 522, 2226).

In a Scotch case under a similar Act it was held that the upper flat of a tenement held with a plot of garden fronting A. street on the west, and bounded by B. street on the north, was premises abutting on B. street, although the only entrance was from A. street (*Campbell v. Edinburgh Magistrates* (1891), 19 R. (Ct. of Sess.) 159).

An owner of premises abutting on a *cul-de-sac* passage was held liable to pay his apportioned share of the costs incurred in making it up, although he had at the time no door into the passage from his premises (*Walthamstow U. D. C. v. Sandell* (1904), 68 J. P. 509; 2 L. G. R. 835; 26 Digest 522, 2225).

B. owned a house which had its front and only entrance in F. street, and behind it a garden with a dead wall at the further end. A new street was made parallel to F. street, alongside the dead wall at the end of B.'s garden. It was held that B.'s land abutted on this new street (*Paddington (Vestry) v. Bramwell* (1880), 44 J. P. 815; 26 Digest 495, 2037). A. owned three houses facing Y. place, and abutting at the rear upon a footpath at the end of a *cul-de-sac* called St. J. street. The ground at the back of these houses was five feet above the level of St. J. street, and the wall, which was A.'s property, was about 12 feet high on the outside. There was no access from A.'s premises to St. J. street. It was held that his premises adjoining or abutted on St. J. street within this section (*Newport Urban Sanitary Authority v. Graham* (1882), 9 Q. B. D. 183; 47 J. P. 133; 26 Digest 522, 2224). CAVE, J., said: "If it had been shown that the wall at the end of St. J. street did not belong to the respondent, or that a strip of land intervened between his premises and the street, they would not have been adjoining or abutting."

W. having a strip of land about four inches wide and 265 feet long abutting on the north side of a street, had erected a boundary fence upon the land along its whole extent, under a covenant to erect, and for ever after maintain, such a fence made with his vendor, who was owner of the land adjoining the strip on the north side. It was held that W. was the owner of the strip of land, and, as such, liable

Note to Section 150. for paying expenses (*Williams v. Wandsworth Board of Works* (1884), 13 Q. B. D. 211; 48 J. P. 439; 26 Digest 495, 2038; followed in *Scott v. Investors' Property Corporation* (1904), 68 J. P. N. 352; cf. *Elsdon v. Hampstead Corporation*, [1905] 2 Ch. 633; 69 J. P. 434; 26 Digest 495, 2041; and *Hampstead Borough Council v. Western* (1907), 71 J. P. 565; 26 Digest 496, 2043; *Hall v. Bolsover U. D. C.* (1909), 73 J. P. 140; 100 L. T. 372; 26 Digest 545, 2429). The court pointed out in *Williams v. Wandsworth Board of Works*, *supra*, that, in the event of the owner of the adjoining property desiring to have access to the street, the strip would command a considerable rent. It was therefore capable of being let at a rack-rent. In *Leith Magistrates v. Gibb* (1882), 9 R. (Ct. of Sess.) 627; 26 Digest 522, 2227 *i*, the owner of property, which was separated from a street by a wall which belonged to some one else, was held not to be liable as the owner of property "fronting or abutting" on such street. The LORD PRESIDENT said there must be access, or an undoubted right of access, from the property sought to be charged to the street.

As to boundary walls in joint ownership, see *L. & S. W. Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610, 618; 35 J. P. 324; 11 Digest 284, 2125; *Watson v. Gray* (1880), 14 Ch. D. 192; 44 J. P. 537; 43 Digest 398, 222.

A. B. owned plots of land, with cottages thereon, separated from a street by a wall five feet high, which belonged, with the land on which it stood, to another person. A public footway ran between the plots of land and through an opening in the wall into the street about its middle. The backs only of the cottages fronted the street, and the only way for vehicles from the cottages to the street was by a small roadway, which, without touching that part of the street which had been paved, came into a highway which joined one end of such street. With the exception of the public footway, this roadway was the only access from the cottages to the street. It was held by the Court of Appeal that A. B. was not the owner of premises "fronting, adjoining, or abutting" on the street within the meaning of this section (*Lightbound v. Higher Bebington L. B.* (1885), 16 Q. B. D. 577; 50 J. P. 500; 26 Digest 522, 2227).

B. purchased in 1903 two houses which she converted into one house fronting on G. road, and in 1907 purchased further land which was added to the grounds, and in the same year purchased a field fronting on E. road. This field was leased to B.'s husband who lived with her, but the lease expired in 1918. The field and the house with the other land purchased in 1907 had always been separately assessed for rates. When E. road had been made up in 1920, the local authority claimed a charge on the whole of B.'s property. It was held that the house and grounds and the field must be considered as one close and subject to the charge (*Altrincham U. D. C. v. O'Brien* (1927), 91 J. P. 149; Digest Supp.).

"Abutting," As to the meaning of the words "abutting," see notes to s. 25 of the Town and Country Planning Act, 1932, *ante*, pp. 1946—7. For that of the words "adjoining," etc., see notes to s. 114 of the P. H. A., 1936, *ante*, pp. 352—3.

Benefit of access in the case of premises not fronting, adjoining, or abutting on the street or part of a street to be paved, etc. is especially provided for under the Private Street Works Act, 1892, *post*, p. 4848. See s. 10 of that Act, *post*, p. 4859.

Soil of side streets.

The soil of private roads leading out of a new street was held to be "land bounding or abutting on such street" in *Pound and Lord Northbrook v. Plumstead Board of Works* (1871), L. R. 7 Q. B. 183; 36 J. P. 468; 26 Digest 278, 152. But in this case Lord N. had determinately reserved the property in the roads to himself. He had not dedicated them to the public, and nothing that he had done was past recall. In a subsequent case, this decision was distinguished. There the defendants, a land company, being owners of certain lands in 1863, laid them out for building purposes and made roads across them, and nearly the whole of the estate was sold in lots to different purchasers. Each lot had a frontage upon one of the roads. The roads had been dedicated to the public, as far as any act of the defendants could do so, but no proceedings were taken to make them repairable by the parish. The plaintiffs, the board of works for the district, from time to time paved the new streets formed by the houses on the estate, and apportioned the cost among the owners of houses forming the streets and the owners of land bounding and abutting on the street. In so doing they charged the defendants in respect of the new streets or roads when these bounded or abutted on the sides or ends of the streets paved, as

being lands abutting on those streets. It was held by the Exchequer Chamber that, assuming the property in the soil of the roads to be in the defendants, they were improperly charged, for they were not, in respect of roads which had been irrevocably dedicated to the public, the owners of land within the meaning of the section (*Plumstead Board of Works v. British Land Co.* (1875), L. R. 10 Q. B. 203; 39 J. P. 376; 26 Digest 495, 2036; reversing L. R. 10 Q. B. 16; 39 J. P. 133; and see *Stretford U. D. C. v. Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 50; 19 T. L. R. 546; 26 Digest 523, 2237, per the VICE-CHANCELLOR of the County Palatine of Lancaster). The decision in *Plumstead Board of Works v. British Land Co.*, *supra*, is illustrative of the principle referred to, *ante*, at p. 4400, that premises cannot be charged unless they are capable of yielding a rack-rent. It must be observed, however, as to *Pound and Lord Northbrook v. Plumstead Board of Works*, (1871) L. R. 7 Q. B. 183; 36 J. P. 468; 26 Digest 277, 152, that Metropolis Management Amendment Act, 1862, s. 77 (11 Halsbury's Statutes 986), makes the owners of houses and land in the street liable not only for the work done to the street proper, but for the paving, etc. to the intersections of the streets. This provision is not contained in the text, and it remains to be decided whether in an urban district the owners of the soil of a street (not dedicated to the public) abutting on a street within this section can be charged with a proportion of the expenses of paving, etc. the latter.

(h) **Means of Lighting.**—See note (e), p. 4398, *ante*, as to these words and generally as to what work an authority may require frontagers to do.

**Note to
Section 150.**

Means of
lighting.

(hh) On Nov. 17th, 1911, the frontagers of C. street received notices requiring them to make up the street, and, amongst other things, make connections with the sewer, within six weeks. At that time contractors were at work making up another road, to which C. street was the only access; and accordingly the plaintiff, after informing the authority of that fact, and that he proposed, with the consent of the other frontagers, to make up the whole of the road himself, waited until the work in the other road was finished. In March, 1912, such work being finished, he began the work in C. street, but the authority refused to supply the levels, or to co-operate unless he signed an agreement as to the making up of the street which they alleged he had agreed to enter into after the six weeks specified in the notice had run out. On May 1st the work was ready for the connections with the sewers to be made, but upon the plaintiff requesting the authority to make the same, they refused to do so, or to allow him to do so, on the ground that the works were not being done under the notice and that the agreement had not yet been signed. The plaintiff made a connection, which the council cut off. The plaintiff then issued a writ for an injunction, and subsequently an arrangement was come to by which the council made the connections at the plaintiff's expense:—*Held*, that the council had never intervened after the expiration of the six weeks or given definite notice of their intention to do so; that the plaintiff had *bonâ fide* endeavoured to comply with the notice; that there had been no unreasonable delay on his part; that he was entitled to have the connections made when he called upon the council to make them; and that the defendants must pay the costs of the action (*Denman v. Finchley U. D. C.* (1912), 76 J. P. 405; 10 L. G. R. 697; 26 Digest 529, 2280).

Time limit
for frontagers
to do work.

The time specified in the notice within which the work shall be completed must be a reasonable time and must take into account the nature and extent of the work and the time which ought fairly and reasonably to be allowed for the completion of that work, under all the circumstances. The least time that can fairly and reasonably be allotted for the completion of the work, being ascertained, is the least time to be inserted in the notice; there is a discretion to allow further time for the completion of the work, but not to fix any shorter time (*Bristol Corporation v. Sinnott*, [1918] 1 Ch. 62; 82 J. P. 9; 26 Digest 525, 2253). In that case a local authority served a notice under this section on frontagers of part of a street 1450 feet long, to sewer, level, pave, etc. the same within one calendar month. The frontagers did not commence the works nor object to the validity of the notice, and after three months the local authority began the works and completed them within four months, and served the frontagers with the usual demand for payment. In an action to recover payment, after an appeal to the L. G. B., which was later withdrawn and no order made by the Board, it was held that the notice was bad in not specifying a reasonable time for the execution of the works, and that the local authority could not

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recover the expenses from the frontagers. And see also *Macclesfield Corporation v. Macclesfield Grammar School*, [1921] 2 Ch. 189; 90 L. J. Ch. 477; 26 Digest 526, 2254, and *Cardiff Corp'n. v. Cardiff Pure Ice and Cold Storage Co. Ltd.* (1930), 96 J. P. 11; 29 L. G. R. 29; Digest Supp., for other decisions on the question of reasonable time in which *Bristol Corporation v. Sinnott*, [1918] 1 Ch. 62; 82 J. P. 9; 26 Digest 525, 2253, were considered.

In the *Macclesfield Case*, *supra*, RUSSELL, J., expressed the view that the work each frontager is required to do is the work upon that portion of the street upon which his property abuts and that, therefore, in considering the reasonableness of the time regard must be had to the particular work each frontager is required to do. This view was approved both by the C. A. in the *Cardiff Case*, *supra*, and by CLAUSON, J., in *Sunderland Corporation v. Gray*, [1928] Ch. 756; 91 J. P. 52; Digest Supp. But in both the earlier cases the court was satisfied on the evidence that the time allowed was adequate even if regard were had to the work upon the whole of the street.

Deposit of
plans :
whether
directory
only.

(i) **Deposit of Plans.**—It has been held that the deposit of these plans is not a condition precedent to the recovery of the expenses from the owners (*Cook v. Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565; 26 Digest 521, 2220 : *per* BLACKBURN, J.). It should be observed, however, that in this case the plans were in fact deposited, though at the office of an official instead of at that of the authority, and, moreover, they were actually inspected. In *Shanklin L. B. v. Millar* (1880), 5 C. P. D. 272; 44 J. P. 635; 26 Digest 530, 2286, a county court judge held that paving expenses could not be recovered from a frontager on the ground that the opportunities afforded to him for inspecting the deposited documents were not reasonable, the byelaws of the local board having provided that their office should be open only on Mondays and Thursdays from 10 till 3. The High Court reversed this decision on the ground that the provision as to deposit of plans was directory only, and not a condition precedent to the recovery of the expenses. In a later case, MANISTY, J., expressed the view that the provisions of the section as to deposit of plans were not merely directory (*Manchester Corporation v. Hampson* (1887), 35 W. R. 334, 591; 26 Digest 526, 2256). It has been held that the omission to follow the plans in every respect does not affect the right to recover so long as the work is substantially the same; see *Acton L. B. v. Lewsey* and cases cited therewith, *post*, p. 4410. A notice given under this section must, however, state that the plans are deposited at the offices of the local authority, and that they are open to inspection, unless the notice gives specific and precise details of the works to be done (*Stourbridge U. D. C. v. Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3; 26 Digest 525, 2252).

Contractor
not affected
by invalidity
of notices.

(k) **Execution of Works by Urban Authority.**—Owners having made default, the local board of M. contracted with W. to do the work for them, the contractor to be paid for the work when the money was collected from the frontagers. By inadvertence the board had given bad notices, and were, therefore, unable to collect the money. W., having done the work, sued the board for the amount due to him by the contract. It was held that he was entitled to recover, as an undertaking must be implied on the part of the board that they were in a position to collect the money and pay it over to him (*Worthington v. Sudlow* (1862), 2 B. & S. 508; 26 J. P. 453; 26 Digest 529, 2275). In another case the plaintiff had in 1858 entered into contracts with a local board for the execution of works under this section, to be paid for out of money to be collected from the frontagers. The contracts were duly performed by the plaintiff. The notices given by the board turned out to be bad, and many frontagers refused to pay the sums assessed upon them. This became known to the plaintiff in 1860, and he then demanded payment. The board were in hopes of being able to collect the money, notwithstanding the invalid notices, and by November, 1860, £800 was collected and paid over to the plaintiff, leaving a balance due of more than £3,000. The plaintiff sued for this sum and obtained judgment, and within six months afterwards commenced an action claiming a writ of *mandamus* commanding the board to levy a rate to satisfy the judgment. It was held that the delay in commencing the original action was reasonable, and that a peremptory writ might be granted (*Worthington v. Hulton* (1865), L. R. 1 Q. B. 63; 16 Digest 321, 1333).

Before entering into a contract for the execution of work under this section, it was not necessary to obtain an estimate from the surveyor as to future repairs under the former s. 174 (3) (13 Halsbury's Statutes 698), now replaced by standing order

(see *ante*, p. 1129) ; nor was such report as is there mentioned a condition precedent to the right to recover the amounts apportioned on the several owners (*Cunningham v. Wolverhampton L. B.* (1857), 7 E. & B. 107 ; 21 J. P. 262 ; 33 Digest 37, 201).

As to the power of an authority to agree with one or more owners to execute the works without observing the formalities required by the section, see *Hall v. Bailey Corporation*, *ante*, p. 587. That case was decided with reference to s. 23 (now repealed) (13 Halsbury's Statutes 635), but the principle laid down in it appears to be equally applicable to this section. LUSH, J., said : " It is not permitted to them (the authority) arbitrarily to interfere and do the work at the owner's expense without first giving him the opportunity of doing it himself. But if they were to do so he is the only person who could complain. The Act requires that the work shall be done by the one party or the other, and surely the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed." And s. 257, *post*, p. 4489, evidently contemplates that there are works which may be done by agreement with the owner, so as to make the expenses recoverable from him and a charge on the premises as therein provided. In *Lewis v. Cardiff Urban Sanitary Authority* (1878), 47 L. J. M. C. 101 ; 26 Digest 534, 2330, an owner, having received notice to pave, indorsed on the notice an authority to the local board to execute the works, and an undertaking to pay the costs on completion. On default of payment after demand, the board proceeded to recover the expenses in a summary manner. It was held that the owner, having by the submission indorsed on the notice admitted the right of the authority to issue such notice, could not require proof before the justices of the fulfilment of the conditions precedent to the existence of such right. It was held, however, that the owner could not by such submission give jurisdiction to the authority if in fact they had none, but that he did thereby waive proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their original authority if he wished to dispute it. It was, therefore, open to him to show that the street was a highway repairable by the inhabitants at large. See further hereon *Mayor, etc. of Folkestone v. Marsh*, and *Mayor, etc. of Folkestone v. Rook*, cited in the notes to s. 146, *ante*, pp. 4367-8.

It must be noticed that the authority have a discretion as to whether they will execute the works or not. See *Denman v. Finchley U. D. C.*, p. 4405, *ante*, as to the position where frontagers have begun to do the works required before the authority take any steps in the matter.

See p. 4397, *ante*, as to altering the respective widths of roadway and footpath, and see p. 4409, *post*, as to departures from the deposited plans.

See the P. H. A. A. A., 1907, s. 28, *post*, p. 5049, as to the removal of materials in streets. The section will only be operative where it has been applied by an order of the M. of H.

As to the liability of the authority for any negligence of their contractor in executing the work, see the cases cited in the notes to s. 265, *post*, p. 4494.

(l) **In a Summary Manner.**—See s. 251, *post*, p. 4481. Where a statute provides a Statutory particular method of recovering such expenses, an action will not lie, the remedy is given by the statute being exclusive (*St. Pancras (Vestry of) v. Batterbury* (1857), 2 C. B. (N.S.) 477 ; 21 J. P. 424 ; 26 Digest 499, 2071. And see *Lamplugh v. Norton* (1889), 22 Q. B. D. 452, 456 ; 53 J. P. 389 ; *Re Boor, Boor v. Hopkins* (1889), 40 Ch. D. 572, 576 ; 53 J. P. 467 ; 26 Digest 538, 2376 ; *G. W. Rail. Co. v. Sharmman* (1892), 61 L. J. Q. B. 600 ; 40 W. R. 643 ; 26 Digest 339, 690). A special Act incorporating the Railways Clauses Consolidation Act, 1845, *ante*, p. 4156, and the Towns Improvement Clauses Act, 1847, *ante*, p. 4200, provided that certain expenses incurred by commissioners in paving streets, etc. might be recoverable as damages. An action having been brought to recover expenses so incurred, it was held that it was not maintainable, the proper construction of the several Acts being, that the expenses were to be recovered as damages before justices under s. 140 of the Railways Clauses Consolidation Act, 1845, *ante*, p. 4159 (*Blackburn (Mayor of) v. Parkinson* (1858), 23 J. P. 262 ; 28 L. J. M. C. 7 ; 26 Digest 551, 2477). But this Act provides for the recovery of amounts below £50 in the county court (s. 261, *post*, p. 4491), and makes the amount a charge on the premises (s. 257, *post*, p. 4489).

A local authority need not wait until the six months during which the summary remedy is available have expired before commencing proceedings to enforce the

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Section 150.**

Power to
agree with
frontagers.

Note to charge created by s. 257 (*Sunderland Corporation v. Priestman*, [1927] 2 Ch. 107; 26
Section 150. L. G. R. 64; Digest Supp.).

This section does not create the relationship of debtor and creditor between an owner and the authority. The only means of recovering the expenses are those provided by the Act. Therefore, a summons for leave to prove in an administration action for the amount awarded was dismissed in *West v. Downman* (1880), 14 Ch. D. 111; 26 Digest 531, 2302. And see *Re Boor, Boor v. Hopkins* (1889), 40 Ch. D. 572, 576; 53 J. P. 467; 26 Digest 538, 2376. In *Eccles v. Wirral R. S. A.* (1886), 17 Q. B. D. 107; 50 J. P. 596; 26 Digest 534, 2336, MATHEW, J., said: "By s. 261, jurisdiction is conferred on the county court in cases of this kind, when the amount is below £50, and although I cannot find any provision which in terms gives the superior court jurisdiction, I should infer that where the amount is above £50, an action would lie in the superior court." But this dictum was delivered without reference to the cases above cited, and there are dicta in later cases that no action lies in the superior court for the recovery of these expenses. See *Willesden L. B. and Wright, In re*, [1896] 2 Q. B. 412; 60 J. P. 708; 26 Digest 532, 2303; *Hanwell U. D. C. and Smith, In re* (1904), 68 J. P. 496; 26 Digest 531, 2300. In the case of expenses incurred under the Private Street Works Act, 1892, *post*, p. 4848, a right of action in any court of competent jurisdiction is given by s. 14, *post*, p. 4864.

As to the several methods of enforcing payment of these expenses under this Act, see the notes to s. 257, *post*, p. 4489, and especially the judgment of BRETT, L.J., in *Tottenham L. B. v. Rowell*, there quoted at length.

Summary proceedings having been taken against an owner for payment of his proportion of expenses, justices ordered him in default of distress to be imprisoned with hard labour. As they had no power to do so, quarter sessions on appeal quashed the order without going into the merits. Afterwards the authority obtained a new order to pay the same amount. It was held that the justices had jurisdiction to make the new order, the former having been quashed as null and void (*Lister v. Hedden L. B.* (1878), 42 J. P. 119).

Orders having been obtained by a local board against A. and L., for payment of paving expenses under this section, it was agreed that the order against L. should not be enforced for three months, in order to enable a case to be stated on a point of law. At the same time an understanding was come to that the order against A. should abide the decision in L.'s case. L., instead of taking his case to the Queen's Bench, went before quarter sessions, and the order against him was quashed on a technical ground (see *Lister v. Hedden L. B.*, *supra*). A. was not informed of the course taken by L., and the three months having expired within which she should have appealed, the local board obtained a distress warrant against her to enforce payment. On motion by A. to restrain the board from enforcing payment until she had had an opportunity of stating a case for the opinion of the Court of Queen's Bench, it was held that the court had power to restrain the board, and on A. undertaking to consent to a case and to pay the money into court, the injunction was granted (*Ashworth v. Hedden Bridge L. B.* (1877), 47 L. J. Ch. 195; 37 L. T. 496; 28 Digest 470, 790).

Jurisdiction
of court :
defences
available.

The court cannot entertain any question as to whether the work was necessary or proper under the circumstances, that being for the local authority to decide (*Bayley v. Wilkinson* (1864), 16 C. B. (N. S.) 161; 26 Digest 525, 2251; *Cook v. Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565; 26 Digest 521, 2220. And see *Chelsea (Vestry of) v. Evans* (1870), 35 J. P. 23; 26 Digest 498, 2060). They may, however, inquire into the original liability of the persons charged; for example, they may and ought to decide whether the street is or is not a highway repairable by the inhabitants at large (*Hesketh v. Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149; 26 Digest 533, 2324. And see to the same effect *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; 26 Digest 533, 2325; *Eccles v. Wirral R. S. A.*, *supra*; *R. (on the prosecution of) Cleckheaton L. B. v. Burnup* (1886), 50 J. P. 598; 26 Digest 270, 94; *Lewis v. Cardiff Urban Sanitary Authority*, *ante*, p. 4407). An objection that a street is a highway repairable by the inhabitants at large may properly be raised in proceedings to enforce payment of the expenses, for it goes to the jurisdiction of the authority to execute the work at the expense of the frontagers (*Walthamstow L. B. v. Staines*, [1891] 2 Ch. 606; 26 Digest 528, 2372). If, however, there is any ground of liability, and the objection only goes to the extent of that liability and

the principle upon which it is to be determined, the justices or other court cannot entertain the objection in proceedings to enforce payment. Thus, in *Wake v. Sheffield Corporation* (1883), 12 Q. B. D. 142; *sub nom. R. v. Recorder of Sheffield*, 48 J. P. 197; 26 Digest 538, 2370, a frontager objected that the plans referred to in the notice showed that part of the work was executed upon land belonging to private owners. It was held that as part of the work was executed in a street, the magistrate could only order payment of the apportioned sum, and the frontager's only remedy was by appeal to the L. G. B. under s. 268, *post*, p. 4495. The decision of the local board in determining to do the work was only erroneous, and not without jurisdiction. See, however, *Bell & Sons v. Great Crosby U. D. C.*, *ante*, p. 4393, as to how such an objection can be raised under the Private Street Works Act, 1892, *post*, p. 4848. *Wake's Case*, *supra*, was followed in *Derby (Mayor, etc. of) v. Grudgings*, [1894] 2 Q. B. 496; 58 J. P. 685; 26 Digest 535, 2341. There the owner of premises fronting on a street having failed to comply with a notice under this section to sewer, etc., the authority did the work, and took proceedings before justices to recover the sum apportioned on him. The owner had given no notice under s. 257, *post*, p. 4489, disputing the apportionment within the specified time. At the hearing of the complaint it was shown that the carriageway of the street was a highway repairable by the inhabitants at large, but that the footway on which the owner's premises fronted was not. It was held on the authority of *Wake's Case* that the authority had jurisdiction to give the notice and make the apportionment in respect of the footway, and that the owner having failed to dispute the apportionment under s. 257, it was conclusive against him, and he could not at the hearing before the justices dispute his liability to pay any part of the apportioned sum. In another case the objection taken before the justices was that part of the work (exceeding £50 in value) had been done by a contractor without a sealed contract, and it was urged that a payment under such a contract was illegal. SMITH, J., pointed out that the objection, if valid, could not be raised in this way (*Bournemouth Commissioners v. Watts* (1884), 14 Q. B. D. 87; 49 J. P. 102; 26 Digest 534, 2340). So it is not open to a frontager to say that, while rightly assessed for certain premises, he has also been assessed for others which do not front or adjoin the street. Such an objection goes merely to the amount of the apportionment, and should be taken by way of objection to the apportionment under s. 257. "It was argued that there was an excess of jurisdiction by the surveyor in respect of part of the sum apportioned. But it seems to me that if he had jurisdiction to make an apportionment against the appellants, which it is admitted he had, then the only possible objection is that he has made such apportionment incorrectly; but that is only an erroneous exercise of jurisdiction, not an excess of jurisdiction. If he had made an apportionment on a person who was not a frontager in respect of any land, there would be an excess of jurisdiction, but that is not the present case" (*per* Lord Esher, M.R., in *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D., at p. 41; 50 J. P. at p. 407; 26 Digest 533, 2325). The result of the cases appears to be that an objection may be taken before justices that the defendant is not liable to pay anything, on the ground that he is not a frontager, or that the place is not a street, or that the place is a highway repairable, etc. Objections as to amount are not cognisable by the justices; they may be raised by an appeal to the M. of H. under s. 268, *post*, p. 4495, and in some cases also (see p. 4416, *post*) by objection to the apportionment under s. 257, *post*, p. 4489. See *Eccles v. Wirral R. S. A.*, *ante*, p. 4408. "There can be no doubt that an apportionment under s. 150 is not conclusive of every defence which can be set up when the frontager is called upon to pay. He may say that the place is not a street, or that he has no premises fronting on the street, or that the place is a highway repairable by the inhabitants at large. He may set up all those defences, and, as it seems to me, any other defence which offers an answer to the whole of his legal liability. But where the question is only as to the amount of his liability, then the apportionment, if not challenged under s. 257, is conclusive" (*per* CHARLES, J., in *Derby (Mayor, etc. of) v. Grudgings*, [1894] 2 Q. B., on p. 504; 58 J. P., on p. 687; 26 Digest 535, 2341). These cases must be regarded as superseding the judgment of BACON, V.-C., in *West v. Downman* (1880), 14 Ch. D. 111; 26 Digest 531, 2302. In *Walthamstow L. B. v. Staines*, *ante*, p. 4408, the court seemed to think, and in *Harwell U. D. C. and Smith, In re*, *post*, p. 4412, it was expressly decided that the only way of raising an objection to the legality of *part* of the expenses (such as legal expenses, collection, etc.) was by way

**Note to
Section 150.**

of appeal to the L. G. B. (now M. of H.) under s. 268, *post*, p. 4495. See also hereon *Sandgate L. B. v. Keene*, and the other cases (including the *Hanwell Case*), noticed in connection therewith at p. 4416, *post*.

As to the effect of a decision that a street is a highway repairable by the inhabitants at large, see *R. v. Hutchings*, the facts of which are set out, *ante*, p. 4394, and *cf.* the cases cited therewith, which were, however, decided on other Acts.

The justices cannot inquire into the reasonableness of the expenditure or whether it has been incurred in point of fact. Nor is it a good objection before justices that the notices required the street to be paved in a particular way, that the plans differed from the notice, and the work done from both. These are only matters of appeal to the M. of H. under s. 268, *post*, p. 4495 (*Cook v. Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565; 26 Digest 521, 2220). It has been held by the House of Lords that the omission strictly to follow the terms of their own notice does not prevent the authority from recovering from the owner his proportion of the expenses incurred (*Acton L. B. v. Lewsey* (1886), 11 App. Cas. 93; 50 J. P. 708; 26 Digest 529, 2276). In that case the notice required the owner to pave part of a street, specifying the materials and mode, and (*inter alia*) requiring him to lay down concrete. The owner having made default, the local authority did his work, but, finding that the concrete would be an unnecessary expense, omitted it. But *cf. infra*.

An authority gave notice to K., an owner of land adjoining a new street, to sewer the road, and lay an eighteen-inch pipe. Whilst carrying out the work upon his default they found a twelve-inch pipe sufficient, and used it, and thus saved expense to K. on the apportionment. It was held that the magistrate was right in holding that the apportioned expenses of the altered work were recoverable, the alteration not being a material matter nor invalidating the notice (*Kershaw v. Sheffield (Corporation of)* (1887), 51 J. P. 759; 26 Digest 529, 2277). An authority served notices on frontagers requiring them to sewer a street as therein specified. On default the authority carried out more extensive sewage works, but including the work necessary for drainage of the street itself, and apportioned on the frontagers part of the cost of the more extensive works, being the amount which it would have cost to sewer the street in accordance with the notices. It was held that the amount so apportioned was recoverable (*Acton U. D. C. v. Watts* (1903), 67 J. P. 400; 1 L. G. R. 594; 26 Digest 529, 2279).

In *Finney v. Birkenhead Corpn.*, [1936] 2 All E. R. 590; 80 Sol. Jo. 655; Digest Supp., a road which had been adopted under s. 152, *post*, p. 4423, was included in the list of roads repairable by the inhabitants at large (prepared under the P. H. A., 1925, Vol. V., *post*) as being so repairable as to the carriageway but not as to the footway, there being some evidence that in fact it had never been made up. Under a local Act, the authority could apportion the whole cost on the frontagers in the case of a road not repairable, and half in a road repairable, by the inhabitants at large. The authority apportioned the whole on the frontagers, but were held entitled to recover half only. In the same case, the notices required the frontagers to make, flag and complete the road, but in making up the authority did not flag the road but asphalted it; it was held that the work specified in the notice must be carried out, and the use of asphalt in place of flags was not a proper compliance with the notice and the authority could not recover, as the work done was not substantially the same as the work required.

**Time limit for
proceedings.**

The provisions of the S. J. A., 1848, s. 11 (11 Halsbury's Statutes 278), which limit the time within which proceedings can be taken before justices to a period of six months from the time when the matter of complaint arises, apply to the recovery of these expenses by summary proceedings; and the six months cannot begin to run till after the expiration of the three months during which the apportionment may be disputed under s. 257, *post*, p. 4489 (*Jacomb v. Dodgson* (1863), 3 B. & S. 461; 27 J. P. 548; 26 Digest 535, 2345). See also *Wilson v. Bolton (Mayor of)* (1871), L. R. 7 Q. B. 105; 36 J. P. 405; 26 Digest 535, 2352, *per* LUSH, J.; and *West v. Downman* (1880), 14 Ch. D. 111; 26 Digest 531, 2302). Where a notice of apportionment was a nullity, and a second and valid notice was afterwards given, it was held that the time did not begin to run until after the second notice (*Sykes v. Huddersfield (Mayor, etc. of)* (1871), 35 J. P. 614; 26 Digest 530, 2284). And the same limitation applies also to proceedings in the county court under s. 261, *post*, p. 4491. Therefore it was held that expenses could not be recovered by a county court action brought more than six months after the expiration of the three months allowed for

disputing the apportionment (*Tottenham L. B. v. Rowell* (1876), 1 Ex. D. 514; 26 Digest 535, 2344, following *West Ham L. B. v. Maddams* (1876), 1 Ex. D. 516 n; 40 J. P. 470; 26 Digest 535, 2343, and see *Metropolitan Water Board v. Burn*, [1913] 1 K. B. 134; 77 J. P. 156; affirmed, [1913] 3 K. B. 181; 77 J. P. 353; 38 Digest 119, 860). But it must not be assumed that at the expiration of nine months from the date of the notice of apportionment the expenses cease to be recoverable summarily, or in the county court under s. 261. Before any proceedings can be taken to recover them it is necessary that a demand of payment should be served upon the owner, and the time runs from the date of such demand, and not from that of the notice of apportionment, which is not a sufficient demand (see s. 257, *post*, p. 4489; *Grece v. Hunt* (1877), 2 Q. B. D. 389; 41 J. P. 356; 26 Digest 532, 2316). The court pointed out that this decision was not inconsistent with *Jacomb v. Dodgson* (1863), 3 B. & S. 461; 27 J. P. 548; 26 Digest 535, 2345, for in that case there had been a demand at the expiration of the three months after the notice of apportionment. It may be reconciled with the other cases cited for the like reason. Consequently, there is no limitation of the time within which proceedings, whether summary or in the county court, must be taken unless a demand is made, and the demand may apparently be made at any time after the expiration of three months from the date of the notice of apportionment. Therefore, under the Metropolitan Management Acts, when works were done and the amount apportioned in June, 1876, but no demand was made until December 31st, 1878, it was held that a summons for payment issued on May 14th, 1879, was in time (*Marr v. Greenwich Board of Works* (1880), 44 J. P. 424; 26 Digest 499, 2074; *Wortley v. St. Mary, Islington (Vestry of)* (1886), 51 J. P. 166; 26 Digest 499, 2075; *Prescott v. Nicholson* (1889), 53 J. P. 597; 60 L. T. 563; 26 Digest 500, 2077). See also, as to the necessity for a demand for apportioned expenses in the metropolis, and as to the date upon which the Limitation Act, 1623 (10 Halsbury's Statutes 429), if it runs at all, begins to run, *Hampstead Corporation v. Caunt*, [1903] 2 K. B. 1; 67 J. P. 344; 26 Digest 499, 2076. See also the notes to Private Street Works Act, 1892, s. 14, *post*, p. 4864.

The six months' limitation does not apply to the enforcing of the charge on the premises given for such expenses by s. 257, *post*, p. 4489 (*Tottenham L. B. v. Rowell* (1880), 15 Ch. D. 378; 26 Digest 536, 2353). Nor need the local authority wait for the expiration of the six months before commencing proceedings to enforce a charge (*Sunderland Corporation v. Priestman*, [1927] 2 Ch. 107; 26 L. G. R. 64; Digest Supp.). Such a charge may be enforced by proceedings commenced within twelve years after the completion of the works (*Hornsey L. B. v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 54 J. P. 391; 26 Digest 537, 2360).

In *West Derby L. B. v. Bell* (1878), 42 J. P. 812; 27 Sol. J. 125, work had been done under this section, and notice of apportionment was served on March 29th, 1878. On the same day a demand was served. Proceedings to recover the amount were instituted in the county court on October 7th, 1878, and it then appeared that a second demand had been made on August 6th. The judge held that the first demand was premature and a nullity, as there was no liability to pay until the expiration of the three months after notice of apportionment. The second demand was, therefore, a good one, and the proceedings were in time. This he considered to be the result of *Grece v. Hunt*, *supra*. As for *Wilson v. Bolton (Mayor of)*, *post*, p. 4418, there the notice of apportionment and the demand had been served at the same time, but no objection was taken in argument on that ground, and so far as it was inconsistent with *Grece v. Hunt*, he considered it to be overruled. The correctness of this decision was established in *Simcox v. Handsworth L. B.* (1881), 8 Q. B. D. 39; 46 J. P. 260; 26 Digest 524, 2242. It was there held that the notice of apportionment concluding with a demand of payment was not a notice of demand within s. 257, *post*, p. 4489, and that time did not begin to run from such demand. And in *Re Bettsworth and Richer* (1888), 37 Ch. D. 535; 52 J. P. 740; 26 Digest 536, 2359, NORTH, J., said: "It is quite true that the owner cannot be compelled to pay till the total costs have been made out and apportioned between the owners, and notice has been served and he has had three months to dispute the apportionment, and at the end of the three months has had written demand served upon him."

If the complaint to recover the expenses is made in time, it is no objection to the validity of a summons that it is issued more than a year after such complaint (*Simcox v. Handsworth L. B.*, *supra*). Of course, if a valid demand has been made and the

Note to Section 150. time has therefore begun to run, it will not be extended by making a second or subsequent demand (see *Harpin v. Sykes* (1885), 49 J. P. N. 148).

Special case. Upon justices declining to make an order for payment the authority obtained a special case. The respondent took no part in its statement, and did not appear in support of the justices' decision. The court decided in favour of the appellants, and it was held that the respondent might be ordered to pay the costs of the appeal (*Wednesbury L. B. v. Stephenson* (1864), 33 L. J. M. C. 111; 33 Digest 421, 1318). In a later case it was held that where it is the duty of a public body to take proceedings of a civil nature before justices, and the defendant raises as untenable point which succeeds, then, although he does not appear on the argument of a special case, it was proper that costs should be allowed against him (*Usk U. D. C. v. Mortimer* (1903), 68 J. P. 38; 33 Digest 404, 1150).

Authority can relieve frontagers of liability.

It was held that when owners were liable for paying expenses under the Metropolis Management Acts, the vestry could not, in their discretion, charge the expenses upon the general rates (*Dryden v. Putney (Overseers of)* (1876), 1 Ex. D. 223; 40 J. P. 263; 26 Digest 278, 154; and see *Taylor v. Oldham (Corporation of)* (1876), 4 Ch. D. 395; 26 Digest 270, 96, per JESSEL, M.R.). Accordingly, a district board were ordered to restore to the general rate an amount so expended, and to levy the same upon the owners of the adjoining houses and land according to the Acts (*Att.-Gen. v. Wandsworth District Board of Works* (1877), 6 Ch. D. 539; 26 Digest 490, 2006). See also *Folkestone Corporation v. Rook*, ante, p. 4368. But now by s. 81 of the P. H. A., 1925, Vol. V., post, any local authority by whom notices have been served under this section or any provision relating to street works in a local Act may, if they think fit, at any time resolve to contribute the whole or a portion of the expenses of the works. Cf. s. 15 of the Private Street Works Act, 1892, and notes thereto, at post, p. 4365. For a case in which a local board were held to be estopped by the terms of their notice from proceeding summarily, see *Gould v. Bacup L. B.*, at post, p. 4418. As to the right to recover from a local authority sums paid under this section by mistake, see *Midland Rail. Co. v. Wihington L. B.* (1883), 11 Q. B. D. 788; 47 J. P. 789; 38 Digest 123, 905; *Moore v. Fulham Vestry*, [1895] 1 Q. B. 399; 59 J. P. 596; 26 Digest 500, 2079; *Self v. Hove Commissioners*, [1895] 1 Q. B. 685; 59 J. P. 103; 41 Digest 40, 295.

What expenses may be included in apportionment.

(ll) A metropolitan district board were held entitled to recover as costs incidental to paving, etc., the cost of serving apportionments, obtaining names of owners, collection of amounts, advertisement and printing expenses (*Poplar Board of Works v. Love* (1874), 38 J. P. 246; 29 L. T. 915; 26 Digest 491, 2013). But this decision was given with reference to the Metropolis Management Amendment Act, 1862, s. 77 (11 Halsbury's Statutes 986), which enables the authority to recover incidental costs and charges, and in a recent case the court held that the words "all other incidental costs and charges" included only out-of-pocket expenses and charges (*Ballard v. Wandsworth Borough Council* (1906), 70 J. P. 331; 95 L. T. 118; 26 Digest 496, 2049). In the text the sum which may be recovered seems to be confined to the expenses of executing the work, and *quere* whether this includes incidental expenses such as those above mentioned. In *Walthamstow L. B. v. Staines*, ante, p. 4408, CHITTY, J., thought it was within the power of the authority to charge for preparation of contract and plans, 4 per cent. for incidental expenses and 4 per cent. for cost of collection. The Court of Appeal doubted whether these expenses could be charged, but did not decide the point. In *Hanwell U. D. C. and Smith, In re* (1904), 68 J. P. 496; 26 Digest 531, 2300, CHANNELL, J., expressed the opinion that an authority were not entitled to make a charge of 5 per cent. to cover office and other incidental expenses. It would appear to follow also from the decision in *Ballard v. Wandsworth Borough Council*, supra, that an authority will not be justified in including a percentage in respect of their officers' time and labour. See an express provision in the Private Street Works Act, 1892, s. 9, post, p. 4358.

The cost of altering the level of a gas main cannot be charged to the frontagers but must be borne by the council under s. 153, post, p. 4425 (*Re Jesty's Avenue, Broadway, Weymouth*, post, p. 4425).

Owners in default.

(m) **Owners in default.**—See notes (f) and (g), ante, pp. 4398, 4400.

Expenses under s. 150 cannot be recovered from one who, though the owner of premises when notice was first given by the authority, has ceased to be owner before the completion of the works (*R. v. Swindon L. B.* (1879), 4 Q. B. D. 305; 43 J. P.

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431; 26 Digest 533, 2319). "I cannot think it was ever intended by the legislature that when the owner has parted with his property, and somebody else is in possession of it, and therefore getting the benefit of the work done, and who ought, therefore, to pay the expenses incurred, it should be competent for the local authority to follow him up wherever he may have gone and hold him personally liable. I think that defect is remedied by s. 257, *post*, p. 4489, which treats owners upon whom notice was originally served and who are owners at the time the work is completed, and the expenses demanded, as the persons upon whom the local board shall be able to come for the expenses" (*per* COCKBURN, L.C.J.). These words were explained by NORTH, J., in *Re Bettesworth and Richer* (1888), 37 Ch. D. 535; 52 J. P. 740; 26 Digest 536, 2359). He pointed out that in *R. v. Swindon L. B.* the same person was owner, both when the work was completed and when the demand was made. But he held that when there was a change of ownership after the completion of the works and before demand, the liability was upon the person who was owner when the works were completed. In that case leasehold houses in an urban district, abutting partly on a private road, were sold on an open contract. At the date of the sale, works had been done by the local board under this section. The final demand for payment of the sum apportioned in respect of the premises was served after the purchase ought to have been completed. It was held that the apportioned expenses became a charge on the premises at the date of the completion of the works, and as between the vendor and purchaser they were payable by the vendor. Compare with this decision *Egg v. Blayney* (1888), 21 Q. B. D. 107; 52 J. P. 517; 26 Digest 496, 2047, a case as to the expenses of paving a new street in the metropolis, where such expenses are not a charge on the premises. It was held therefore, that if the owner sells the premises while the expenses are unpaid and conveys as beneficial owner, and the purchaser is compelled to pay the expenses, he cannot recover from the vendor under the implied covenant against incumbrances. See also *Re Field*, W. N. (1888), p. 36; and the observations on *Re Bettesworth and Richer* in *Hornsey L. B. v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 54 J. P. 391; 26 Digest 537, 2360. *R. v. Swindon L. B.* was distinguished in *Tottenham L. B. v. Williamson* (1893), 57 J. P. 614; 62 L. J. Q. B. 322; 26 Digest 551, 2470, where it was held that under the provisions of a local Act (Tottenham Local Board Act, 1890), the person who received the rack-rent at the date of the estimation and apportionment of the expenses was liable, notwithstanding that he had ceased to be the owner of the premises within the meaning of the local Act and s. 4, *ante*, p. 4335, of this Act incorporated therewith before the completion of the works. See also *Belfast Corporation v. Hill*, [1904] 2 I. R. 105. The dictum of COCKBURN, L.C.J., in the *Swindon Case*, *supra*, was at length expressly disapproved by the Court of Appeal in *Millard v. Balby-with-Hexthorpe U. C.*, [1905] 1 K. B. 60; 69 J. P. 13; 26 Digest 533, 2322. There the appellant was the owner of certain premises in June, 1899, and as such had served upon him a notice under s. 150. The respondents, upon his default, executed the work, which was completed in December, 1901. Formal notice of the apportionment was served on the appellant in November, 1902, and on May 20th, 1903, a demand for payment was served upon him. In April, 1902, he had ceased to be the owner of the premises. It was held that as he was the owner of the premises when the works were completed, he was liable to pay the amount apportioned in respect thereof. In a later case it was held that a person who was the owner of premises at the date of the completion of the work was liable, although he was not the owner of the premises when the notice requiring the works to be executed was served and although he had ceased to be owner prior to service of notice of apportionment and demand for payment (*East Ham U. C. v. Aylett*, [1905] 2 K. B. 22; 69 J. P. 205; 26 Digest 533, 2321). In *Croydon Corporation v. Oldaker*, [1937] 1 K. B. 337; [1936] 3 All E. R. 360; 100 J. P. 519; Digest Supp., a local Act provided that whenever the corporation put into force the provisions of s. 150 of this Act they might, before themselves executing any works, recover summarily the estimated cost from the owners in default. An owner who had been served with a notice under s. 150, conveyed his premises to a third party, and subsequently refused to pay a demand made under the local Act for the estimated cost of the unexecuted works. The justices were of opinion that he was not liable to pay, since there could be no default until the expiration of the time given in the notice to repair and that on the expiration of that

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time he was no longer the owner. It was, however, held that the owner for purposes of the local Act was the owner at the time of the notice to execute the street works and that if such owner failed to execute the works he became and remained for purposes of that Act the owner in default, notwithstanding the conveyance of the property to a third person. In *Re Lewis* (1908), 42 Ir. L. T. 210, compensation was allowed to a purchaser in respect of an outstanding sanitary notice not disclosed to him.

The Metropolitan Management Amendment Act, 1862, ss. 77 and 96 (11 Halsbury's Statutes 986, 989), make paving expenses recoverable by action from the present or future owners of the premises, or from any person who then or thereafter occupies the premises. The vestry of B. had recovered a judgment against a former owner of premises in respect of such expenses, which remained unsatisfied. It was held that such judgment was no bar to a subsequent action against the defendant, who occupied the premises as tenant to a succeeding owner (*Bermondsey (Vestry of) v. Ramsey* (1871), L. R. 6 C. P. 247; 35 J. P. 567; 26 Digest 496, 2044). Under the same Act it was held that the expenses might be recovered from the mortgagee in possession as owner, notwithstanding that another person was owner at the date when the work was resolved upon, and that the amount could be recovered from future owners, although there had been no arrangement to accept payment by instalments (*Plumstead District Board of Works v. Ingoldby* (1873), L. R. 8 Exch. 63, 174; 37 J. P. 759; 26 Digest 496, 2045). See also *Hampstead Corporation v. Caunt, ante*, p. 4411, as to the liability of future owners in the metropolis. As to the liability of "successive owners" under a local Act, see *Blackburn (Corporation of) v. Micklethwait* (1886), 50 J. P. 550; 54 L. T. 539; 26 Digest 551, 2469.

The Crown is not bound by the provisions of this section. Therefore land owned and occupied for Crown purposes is exempt (*Hornsey U. D. C. v. Hennell*, [1902] 2 K. B. 73; 66 J. P. 613; 26 Digest 522, 2230 (volunteer headquarters); cf. *Dellar Bros., Ltd. v. Drury*, [1912] 2 K. B. 209; 76 J. P. 239; 34 Digest 585, 67, as to territorial force property). See also upon the general question of statutes which do, or do not, bind the Crown, *Cooper v. Hawkins*, [1904] 2 K. B. 164; 68 J. P. 25; 42 Digest 692, 1075; *Gorton Local Board of Health v. Prison Commissioners*, [1904] 2 K. K. 164, n; 68 J. P. 27, n; 42 Digest 690, 1050; *Edinburgh Corporation v. Lord Advocate*, [1912] S. C. 1085, and *Chare v. Hart* (1918), 83 J. P. 54; 17 L. G. R. 233; 26 Digest 390, 1173.

Apportionment: power to amend or substitute new one.

(n) **Apportionment.**—An apportionment was made and notice given to an owner that his proportion was £20 2s. In answer to a summons for payment, he objected that the apportionment was bad, on the ground that the expenses of two streets had been lumped together, and the aggregate amount divided among the owners in the two streets; and the justices dismissed the complaint on that ground. The surveyor then made a fresh apportionment, and a notice was served on the owner that his proportion was £19 11s. He gave notice that he disputed the apportionment, and the matter came before justices under a section corresponding to s. 181 (13 Halsbury's Statutes 704). On a case stated, it was held that the first apportionment was a nullity, and that the surveyor, not being *functus officio*, was right in making a fresh apportionment (*Cook v. Ipswich L. B.* (1871), L. R. 6 Q. B. 451; 35 J. P. 565; 26 Digest 521, 2220); see also *Nash v. Giles* (1926), 91 J. P. 19; 43 T. L. R. 121; Digest Supp., in the notes to s. 19 of P. H. A. A. A., 1907, *post*, p. 5045. An apportionment was signed by B., who was not then surveyor, having been superseded previously. The authority on discovering the mistake treated it as a nullity, and issued a fresh apportionment signed by their actual surveyor. It was held that they had acted properly (*Sykes v. Huddersfield (Mayor, etc. of)* (1871), 35 J. P. 614; 26 Digest 530, 2284). Where a local Act required the proportion in which expenses were to be apportioned to be ascertained and settled by the corporation, it was held that the fact that the apportionment had been corrected by their surveyor after it had been approved by them did not invalidate it (*St. Helen's (Corporation of) v. Riley* (1883), 47 J. P. 471; 26 Digest 550, 2467). An authority acting under this section served the defendant and other frontagers with notices requiring them to execute works including certain work which could not be legally included in such notices. The notices not being complied with, the authority did the works, and apportioned the expenses among the frontagers. A summons to recover from the defendant £650, the amount charged to him, having been dismissed by the magistrates, the authority made a second apportionment, excluding the expenses of the

work which had been wrongly included, the amount charged to the defendant therein being £579. They then brought an action under s. 257, *post*, p. 4489, to establish a charge on the defendant's premises for £579, or in the alternative for £650 :—*Held*, that the authority had power to make a second apportionment, and that, notwithstanding the dismissal of the summons, they were entitled to a charge for £579 (*Manchester (Mayor of) v. Hampson* (1886), 35 W. R. 334, 591; 26 Digest 526, 2256). See also *Sunderland Corporation v. Gray*, cited at p. 4406, *ante*. See also as to the jurisdiction to make a second apportionment, *Bishop v. Wandsworth District Board* (1900), 64 J. P. 630; 69 L. J. Q. B. 632; 26 Digest 499, 2070; *Elsdon v. Hampstead Borough Council*, [1905] 2 Ch. 633; 69 J. P. 434; 26 Digest 495, 2041. The decision in *Cook v. Ipswich L. B.* was considered in *Shanklin L. B. v. Millar* (1880), 5 C. P. D. 272; 44 J. P. 635; 26 Digest 530, 2286. In that case the apportionment was made in respect of five roads. The defendant had taken no steps to dispute the apportionment, and when proceedings against him were instituted in the county court he contended that the apportionment was bad in law. On a case stated, the High Court held that the defendant was liable. DENMAN, J., referring to the former decision, said that it was not intended to decide "that an apportionment which is otherwise good on the face of it, is necessarily a nullity, and may be treated as such in any court before which it may come, because two streets instead of one are included in the apportionment; but the court meant this, viz., that when that is the case, and the parties have come to the conclusion that the apportionment cannot be enforced and the surveyor makes a fresh apportionment, the former one becomes a nullity in the sense that it cannot be enforced, and is useless for particular purposes and cannot stand in the way of a good apportionment. That is, to my mind, the full extent of the decision, and it is not a decision that, if no steps are taken to set aside or dispute the apportionment on the ground that the party charged is not liable, it may be treated as a nullity when it comes before the court." See also *Wake v. Sheffield Corporation*, and *Derby (Mayor, etc. of) v. Grudgings*, cited *ante*, p. 4409, for discussions of *Cook v. Ipswich L. B.* It appears from these cases that an apportionment, if made in respect of the paving, etc. of more than one street, may be objected to under s. 257, *post*, p. 4489; but that, if this is not done, the owner is liable for the amount apportioned.

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Two or more houses or plots belonging to one owner must not be grouped together in the apportionment; a share of the cost must be apportioned on each separately (*Croydon R. D. C. v. Betts*, [1914] 1 Ch. 870; 26 Digest 536, 2358).

As to when two or more plots constitute one "close" so as to be chargeable under the Act, see *Altrincham U. D. C. v. O'Brien* (1927), 91 J. P. 149, at p. 4404, *ante*.

Premises belonging to the defendants abutting upon a new street which a metropolitan vestry paved for half its breadth only, the side paved being that nearest the defendants' premises. The vestry apportioned the whole cost of paving upon the premises on the defendants' side of the street, omitting those on the other side. It was held that the apportionment was invalid, for the owners on both sides ought to have been charged (*Mile End (Vestry of) v. Whitechapel (Guardians of)* (1876), 1 Q. B. D. 680; 41 J. P. 20, affirming 40 J. P. 565; 45 L. J. M. C. 75; 26 Digest 497, 2056). But this was a decision under the Metropolis Management Act, 1862, s. 77 (11 Halsbury's Statutes 986), which imposes liability on the owners of houses forming the street, and on the land bounding and abutting on such street. The language used in the text is different; and where an authority paved a footpath on one side of a street, and apportioned the cost among the owners on that side only, it was held that the apportionment was right (*Wakefield Urban Sanitary Authority v. Mander* (1880), 5 C. P. D. 248; 44 J. P. 522; 26 Digest 530, 2282). See, however, the Private Street Works Act, 1892, s. 10, *post*, p. 4859, and a case decided thereon (*Clacton-on-Sea L. B. v. Young*, [1895] 1 Q. B. 395; 59 J. P. 581; 26 Digest 540, 2389). And see now as to the metropolis, the Metropolis Management Amendment Act, 1890 (11 Halsbury's Statutes 1014), and *Paddington Vestry v. North Metropolitan Railway and Canal Co.*, [1894] 1 Q. B. 633; 58 J. P. 413; 26 Digest 498, 2059; *White v. Fulham Vestry* (1896), 60 J. P. 327; 74 L. T. 425; 26 Digest 276, 142; *Property Exchange, Ltd. v. Wandsworth Board of Works*, *post*, p. 4419. See also *Evans v. Newport Urban Sanitary Authority* and the other cases cited therewith at p. 4418, *post*, as to the method of apportionment when a strip is added to a road already repairable by the inhabitants at large.

It has been decided under the Private Street Works Act, 1892, *post*, p. 4848, that

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all the premises in a street must be included in the apportionment although some of them are *extra commercium* and have therefore no "owners" (*Herne Bay U. D. C. v. Payne*, [1907] 2 K. B. 130; 71 J. P. 282; 26 Digest 544, 2425). This decision has, however, no application to an authority proceeding under s. 150, under which the total expenses should be divided amongst the persons who are statutory "owners," and can be made to contribute. See 71 J. P. N. 337.

**Time for
making
apportion-
ment.**

There does not appear to be any limit to the time within which an apportionment must be made (*Bradley v. Greenwich District Board of Works* (1878), 3 Q. B. D. 384; 42 J. P. 725; 26 Digest 497, 2051). But delay in making the apportionment will not extend the time for bringing an action to enforce the charge on the premises under s. 257, *post*, p. 4489. Such an action must be brought within twelve years after the completion of the works. See *Hornsey L. B. v. Monarch Investment Building Society* (1889), 24 Q. B. D. 1; 54 J. P. 391; 26 Digest 537, 2360.

**Notice of
dispute.**

(o) **Arbitration.**—Section 257, *post*, p. 4489, limits the time within which notice of any dispute is to be given. See *Hesketh v. Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149; 26 Digest 533, 2324.

If a notice is given disputing the apportionment, no proceedings can be taken to recover the expenses of the works until the dispute has been determined by arbitration (*Sandgate L. B. v. Keene*, [1892] 1 Q. B. 831; 56 J. P. 484; 26 Digest 530, 2293).

An owner, on receiving notice of apportionment, sent to the authority a letter which appeared to be rather an objection to the prime cost of the work than to the mode in which that prime cost was apportioned; but it was held that as the letter was treated by the authority in letters to the owner and in a resolution, as a good notice disputing the apportionment, it must be regarded as such, and that the authority were bound to go to arbitration before commencing an action to recover the apportioned amount. Another owner disputed the claim of the authority in general terms, and this was held a good notice (*Folkestone (Mayor, etc. of) v. Brooks; Same v. Ladd*, [1893] 3 Ch. 22; 58 J. P. 53; 26 Digest 531, 2294). Where, however, an owner takes up the position that the authority have no jurisdiction at all to charge him with the expenses of making up a street, there is no dispute which must first go to arbitration (*West Hartlepool (Mayor, etc. of) v. Robinson* (1897), 62 J. P. 35; 77 L. T. 387; 26 Digest 275, 133).

**Jurisdiction
of arbitrator.**

The arbitration here referred to has reference not to a dispute between the frontagers generally on one side, and the authority on the other, but to one in which the owner of a particular set of premises complains of the apportionment as regards himself personally. There must be as many separate arbitrations as there are disputing owners, for every disputing owner may appoint an arbitrator. Therefore, an award between one of several frontagers called upon to pay the expenses of paving a street and the authority, by which the arbitrator has altered not merely the assessment upon the particular frontage, but the assessment in regard to all the frontages, is not binding upon a frontager not a party to the arbitration, so as to entitle the authority to recover from him the sum which would be due from him on the footing of the altered assessment (*Tunbridge Wells L. B. v. Akroyd* (1880), 5 Ex. D. 199; 44 J. P. 504; 26 Digest 532, 2304).

The text only authorises an arbitration in respect of the proportion to be borne by a defaulting owner, and not in respect of any question as to the expenses being reasonable or properly incurred by the authority (*Bayley v. Wilkinson* (1864), 33 L. J. M. C. 161; 10 L. T. 543; 26 Digest 525, 2251); and see also *Re Stoker and Morpeth Corporation*, [1915] 2 K. B. 511; 79 J. P. 201; 26 Digest 531, 2301. Nor can the arbitrator inquire into details of the total amount certified by the surveyor (*Re Causton and Bromley U. D. C.* (1900), 64 J. P. 760; 17 T. L. R. 25; 26 Digest 531, 2299). When a dispute as to the apportionment comes before justices as arbitrators under s. 181, *post*, p. 4467, and equally when the matter comes before them on a complaint to enforce payment, they have no jurisdiction to inquire into the question whether the amount alleged has been actually incurred. If the appellant is aggrieved by the alleged overcharge, his remedy is by appeal to the M. of H. under s. 268, *post*, p. 4495 (*Cook v. Ipswich L. B.*, *ante*, p. 4414). In *Sandgate L. B. v. Keene*, *supra*, and in *Bournemouth Commissioners v. Watts*, *ante*, p. 4409, there are *dicta* suggesting that an arbitrator may deal with any dispute that may arise, but in a later case the Court of Appeal decided that he has only jurisdiction to fix the amount, and cannot fix the liability (*Willesden L. B. and Wright, In re*, [1896] 2 Q. B. 412;

26 Digest 532, 2303); and see *Hanwell U. D. C. and Smith, In re* (1904), 68 J. P. 496; 26 Digest 531, 2300, where CHANNELL, J., decided that the only power which an arbitrator has is to divide up the total sum which the authority have decided to be the cost of the work, and that he has no jurisdiction to entertain objections to the total cost of the work, as given by the surveyor to the authority. See also *dicta* of the Court of Appeal to the same effect in *Wake v. Sheffield Corporation*, *ante*, p. 4409, and *Walhamstow L. B. v. Staines*, *ante*, p. 4409. See, on the other hand, *Handsworth U. D. C. v. Derrington*, [1897] 2 Ch. 438; 61 J. P. 518; 26 Digest 528, 2268, where it was held by KEEWICH, J., that if the proportion of the expenses was referred to arbitration, all objections to the validity of the proceedings of the authority on the ground of insufficient notice, such as neglecting to serve every frontager, or otherwise, must be raised before the arbitrators, and that it is too late to raise them by action or other proceeding on the award. *Cf.*, however, *Heskeith v. Atherton L. B.* (1873), L. R. 9 Q. B. 4; 38 J. P. 149; 26 Digest 533, 2324, where it was held that the question of highway or no highway could not be raised before an arbitrator. The owner of two properties adjoining each other and abutting on a street, received a notice under s. 150. The notice referred only to one of the two properties. Upon his default the authority executed the works in the street adjoining both properties. The apportionment of the expenses only referred to the one property, though the owner's share of the expenses was calculated on the frontage of both. The owner having disputed the apportionment, the arbitrator held that it was bad, and that the owner's share should be reduced to a sum proportionate to the frontage of the one property to which the notice and the apportionment had referred. It was held that he had jurisdiction so to award (*Thomas v. Hendon R. D. C.* (1911), 75 J. P. 161; 9 L. G. R. 234; 26 Digest 532, 2312). Under similar provisions in Ireland it has been held that an arbitrator cannot give effect to a frontager's claim that, where no footpath is provided on his side of the street, he ought not to be charged in respect of the opposite footpath, but only in respect of the roadway; in such a case the frontager should appeal to the L. G. B. (now, in England, the M. of H.) (*Bangor U. D. C. v. McKee* (1914), 48 Ir. L. T. 92; Digest Supp.). If there has been no arbitration an objection may be taken to the sufficiency of a notice on proceedings for the recovery of expenses (*Stourbridge U. D. C. v. Butler*, [1909] 1 Ch. 87; 73 J. P. 3; 26 Digest 525, 2252). It has been held with reference to the Metropolis Management Acts, 1855 and 1862 (11 Halsbury's Statutes 889, 965), that the principle upon which the expenses have been apportioned cannot be questioned before any tribunal (*Nesbitt v. Greenwich District Board of Works* (1875), L. R. 10 Q. B. 465; 39 J. P. 582; 26 Digest 498, 2064; *Stotesbury v. St. Giles, Camberwell (Vestry of)* (1888), 53 J. P. 5; 57 L. J. M. C. 114; 26 Digest 498, 2065; *Davis v. Greenwich District Board of Works*, [1895] 2 Q. B. 219; 59 J. P. 517; 26 Digest 499, 2067; *Metropolitan District Rail. Co. v. Fulham Vestry*, [1895] 2 Q. B. 443; 59 J. P. 679; 26 Digest 498, 2066). See, however, *R. v. Marsham*, [1892] 1 Q. B. 371; 56 J. P. 164; 26 Digest 498, 2061; and *Elsdon v. Hampstead Corporation*, [1905] 2 Ch. 633; 69 J. P. 434; 26 Digest 495, 2041.

It will be seen, on reference to s. 268, *post*, p. 4459, that a frontager may, if he pleases, refrain from having recourse to arbitration, and in lieu thereof make complaint to the M. of H. within twenty-one days from the "decision" of the authority. A notice to pave and a notice of apportionment are not, but a demand for payment is, a "decision" within the meaning of that section (*R. v. Local Government Board* (1882), 9 Q. B. D. 600; 46 J. P. 820; affirmed 10 Q. B. D. 309; 47 J. P. 228; 26 Digest 532, 2318; *Wake v. Sheffield Corporation*; *Bournemouth Commissioners v. Watts*, *ante*, p. 4409).

For the provisions of this Act as to arbitration, see s. 179, *post*, p. 4461. An award under this section cannot be summarily enforced under the Arbitration Act, 1889, s. 12, *post*, p. 4791 (*Re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 60 J. P. 708; 26 Digest 532, 2303). Nor (*semble*) can an action be brought upon it (*ibid.*).

(p) **Private Improvement Expenses.**—See s. 213, *post*, p. 4468.

The construction of this clause is not clear, and it has been interpreted in two improvement ways. Some consider that the declaring the expenses to be private improvement expenses should be done in respect of each separate premises; in other words, that an apportionment should be made in any case in order to determine the extent to which each owner is liable according to the frontage of his premises. Upon this being done, the expenses so determined may either be recovered from the owners, Private improvement expenses.

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or may be declared to be private improvement expenses in any one or more cases. The amount actually recovered from an owner would thus be the same, whether he had to pay the sum apportioned on him at once, or by means of a private improvement rate. This opinion is based on the ground that the object of the section is to impose a liability according to frontage, and that s. 215, *post*, p. 4470, which enables any owner to redeem private improvement expenses, implies that the expenses, so far as he is concerned, have been already fixed and determined. It is also argued that s. 257, *post*, p. 4489, contemplates an apportionment in every case, and that the contrary opinion deprives him of the important rights which the statute confers as to disputing the apportionment. The other view is that the authority have a discretion either to apportion in the ordinary way according to frontages, or to take the total expenses, ascertain the sum payable in each year with the addition of interest, and then make a rate upon the several premises according to their rateable value, frontage as an element in determining liability being rejected altogether. This opinion is supported by the punctuation of the clause, and it is not unworthy of observation that the language of the clause differs from that in the P. H. A., 1848, s. 69. It is by no means easy to decide between the two possible constructions. In the absence of express authority an opinion must be advanced with hesitation; but it is submitted on the whole that the first is the more correct construction. The two following cases, in so far as they bear upon the point, are in favour of this view.

A local board demanded from an owner his proportion of the expenses in January, 1861. This amount not having been paid on August 25th, 1870, the board resolved that it should be declared private improvement expenses; and in September, 1870, they declared it to be payable by annual instalments. It was held that the demand in 1861 amounted to an election to treat the amount due as a debt from the owner, and that they had no power to declare it to be private improvement expenses (*Wilson v. Bolton (Mayor, etc. of)* (1871), L. R. 7 Q. B. 105; 36 J. P. 405; 26 Digest 535, 2352). An authority gave a notice in the form in Sched. IV., Form G (13 Halsbury's Statutes 776), but added to it words to the effect that if the owner neglected to do the work they would do it, and declare the expenses to be private improvement expenses. It was held that they were estopped by the terms of their notice from taking summary proceedings for the recovery of the expenses (*Gould v. Bacup L. B.* (1881), 45 J. P. 325; 50 L. J. M. C. 44; 26 Digest 526, 2258).

Part of road
repairable by
inhabitants
at large.

(g) *Part of Road Repairable by Local Authority.*—The meaning of the paragraph was thus explained in *Maude v. Baildon L. B.* (1883), 10 Q. B. D. 394; 47 J. P. 644; 26 Digest 269, 93, by POLLOCK, B.: "Its effect is not to say that wherever there is a (public) footpath running parallel the rest of the ground is in such a case to be deemed a street. It merely means to say that in all those cases in which the magistrates could properly find the residue to be a street, that power of so finding is not to be taken away in consequence of the fact that there is a public footpath."

In proceedings under this section it appeared that the street was formed by an old footpath and strips of land alongside, which had been recently added to widen it. The old footpath was repairable by the inhabitants at large. The justices found that the road was in part an ancient footpath or highway, but that it had been altered, widened, and added to, and that houses having been built abutting thereon it was a street within the meaning of the section; that the frontagers were liable to contribute to the expenses of improving it; and an order was accordingly made for payment by the frontagers of such expenses. It was held that having regard to the terms of the section, the frontagers were chargeable with the expenses of improving the whole street, and not merely such part of it as had been added to the ancient highway (*Evans v. Newport Urban Sanitary Authority* (1889), 24 Q. B. D. 264; 54 J. P. 374; 26 Digest 520, 2216). This case was approved by the Court of Appeal in *Harrow U. D. C. v. Wreathall* (1926), unreported. In 1883, the owners of an estate, through which ran an ancient highway about thirty feet wide, repairable by the inhabitants at large, agreed with the borough council, that as and when the estate should be laid out for building the owners would straighten and lay out the road so as to make it forty feet wide throughout. The agreement recited that it was entered into for the purpose of settling a question which had arisen as to the extent of the public rights over the road. When the whole of the road had been laid out in accordance with the agreement, the council made it up, and sought to recover the expenses from the owners of premises abutting on the road. JOYCE, J., held that the agreement did not constitute a purchase of the land thrown in to

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widen the road ; and consequently, having regard to the latter part of s. 150, that the frontagers were chargeable with the expenses of improving the whole road and not merely such parts of it as had been added to the ancient highway (*Portsmouth Corporation v. Hall* (1907), 71 J. P. 299 ; 97 L. T. 43). This decision was reversed on appeal (71 J. P. 564 ; 98 L. T. 513 ; 26 Digest 521, 2219), it being held that the agreement amounted to a purchase by the council under s. 154, *post*, p. 4425, and that the defendant was not liable for any expenses under s. 150. In connection with these decisions reference should be made to ss. 30 and 31, P. H. A., 1925, Vol. V., *post*. Under these sections local authorities may, under certain circumstances, require persons building on land adjoining highways to widen such highways, and the question arises whether such widened highways can, where the original highway was repairable by the inhabitants at large, be made up at the expense of the frontagers under this section and the cases above cited. This question is discussed at length in the notes to these sections in Vol. V., *post*. A street, sixteen feet wide, in the metropolis, had been a highway from the year 1815, and had become an "old street." On the south side were a number of cottages ; the street was paved on that side, and from time to time substantial repairs were done to it ; the frontagers on the north side took no part in the acts of repair. In 1898 a new strip of land, twenty-four feet wide, was dedicated to the public on the north side, houses were built on that side, and the authority paved the new part of the street and made an apportionment upon the frontagers on the north side only. The magistrate found, and the Divisional Court upheld his view, that the added strip on the north side was itself a separate "new street," with the result that the paving expenses were thrown upon the owners of property abutting on that new street. On appeal, it was held (following *Richards v. Kessick*, *ante*, p. 4390, and *White v. Fulham Vestry*, *ante*, p. 4395) that the paving expenses were thrown only upon the owners of property abutting on the north side of the new strip, whether under the Metropolis Management Acts or the Public Health Act (*Property Exchange, Ltd. v. Wandsworth Board of Works*, [1902] 2 K. B. 61 ; 66 J. P. 435 ; 26 Digest 277, 143). See also the argument in *Chorley Corporation v. Nightingale*, [1906] 2 K. B. 612 ; 70 J. P. 500 (affirmed on appeal on a point not material in this connection, [1907] 2 K. B. 637 ; 71 J. P. 441 ; 26 Digest 315, 472), and a considered judgment of the Leeds stipendiary magistrate (Mr. C. M. Atkinson), at 71 J. P. N. 53.

In *Chorley Corporation v. Nightingale*, *supra*, it was held that there is no rule of law that a ditch running alongside a road between the *via trita* and the fence cannot be dedicated as part of the highway ; that whether it is part of the highway or not is a question of fact ; and that where it is found that such a ditch has been included in the dedication, then upon its being filled up, and made available for passage, the road ought not to be treated as a street which consists partly of an old highway and partly of an added strip, so as to constitute a street of which "only a part" is repairable by the inhabitants at large, and therefore one in respect of which frontagers are liable for paving expenses under this section. From this case it would also appear that in construing the final paragraph of s. 150, the maxim *de minimis* may be applied.

In *Hanscombe v. Bedfordshire C. C.*, [1938] Ch. 944 ; [1938] 3 All E. R. 647 ; 102 J. P. 443 ; Digest Supp., it was held that there is a presumption that a ditch, which is not being adapted for the passage of the public and is on the road side of a hedge bank, does not form part of the highway though this presumption may be rebutted.

In *Chippendale v. Pontefract R. D. C.* (1907), 71 J. P. 231 ; 26 Digest 315, 471, a county court judge found as a fact that the ditch there in question did not form part of the highway. Where a highway has been laid out under an award and is exclusive of the ditches, still of the prescribed width, there is no presumption that either ditch forms part of the highway (*Simcox v. Yardley R. D. C.* (1905), 69 J. P. 66 ; 3 L. G. R. 1350 ; 26 Digest 315, 473). See also *Walmsley v. Featherstone U. D. C.* (1909), 73 J. P. 322 ; 7 L. G. R. 806 ; 26 Digest 310, 430, where it was held that the site of a ditch piped and filled up nine years before by the council with the owner's consent (to prevent accidents to persons walking on the footpath at night) had not been dedicated to the public.

It is difficult to reconcile with the cases which decide that strips of land added to a highway may be made up at the expense of the frontagers, a statement of Lord ALVERSTONE, C.J., in *Escott v. Newport Corporation*, [1904] 2 K. B. 369 ; 68 J. P.

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135; 26 Digest 327, 597, to the effect that a strip of land added by an adjoining owner to an old highway and paved by him, and which the public had the right to use as a public footpath, was vested in the local authority. The land could only so vest under s. 149, *ante*, p. 4375, if a highway *repairable by the inhabitants at large*. This statement was not, however, necessary to the decision: and see a criticism by WARRINGTON, J., and the judgments of the Court of Appeal in *Andrews v. Abertillery U. D. C.*, [1911] 2 Ch. 398; 75 J. P. 449; 20 Digest 201, 19.

The fact that, owing to the proviso to the section, the authority might as to a street, a part whereof is repairable by the inhabitants at large, put into operation their powers under this section, will not prevent them from being indicted under the Highways and Locomotives (Amendment) Act, 1878, s. 10, *post*, p. 4603, if the part repairable by the public is allowed to fall into disrepair (*R. v. Crompton U. D. C.* (1902), 66 J. P. 566; 86 L. T. 762; 26 Digest 377, 1025).

Exemption
from
expenses
under last
section of
incumbent of
church, etc.

151. The incumbent or minister of any church chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor (a), shall not be liable to any expenses under the last preceding section, as the owner or occupier of such church chapel or place or of any churchyard or burial ground attached thereto (b), nor shall any such expenses be deemed to be a charge on such church chapel or other place, or on such churchyard or burial ground, or to subject the same to distress, execution or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted (c).

This section does not apply to a district in which the Private Street Works Act 1892, has been adopted. See s. 25 of that Act, *post*, p. 4869; but a similar exemption is contained in s. 16 thereof, *post*, p. 4865.

Exemption
of churches,
etc., from
poor rate.

(a) The statute exempting from poor rate churches and chapels is the Poor Rate Exemption Act, 1833 (14 Halsbury's Statutes 500). By it "no person or persons shall be rated, or shall be liable to be rated, or to pay to any church or poor rates or cesses for or in respect of any churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act or Acts now in force: Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting-houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage" (s. 1, *op. cit.* 500). "Provided always, that no person or persons shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting-houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor" (s. 2, *op. cit.* 501). See Places of Worship Registration Act, 1855 (6 Halsbury's Statutes 1229), as to the certifying of places of religious worship, and Sunday and Ragged Schools (Exemption from Rating) Act, 1869, s. 2 (14 Halsbury's Statutes 546), for a definition of Sunday school.

Churches were immune from rates prior to the passing of the above statute, and its object was to extend the same immunity to chapels, etc. In *Winstanley v. North Manchester Overseers*, [1910] A. C. 7; 74 J. P. 49; 38 Digest 452, 189, a churchyard or burial ground had been acquired under the Church Building Acts, at a distance of about 300 yards from the church. It was held (1) that the rector who received fees in respect of such burial ground was the "occupier" of it for rating purposes and was liable to be rated in respect thereof; and (2) that the burial ground was not exempt from rates under the Act of 1833.

Effect of
the section.

The text only exempts an incumbent or minister; therefore, trustees, other than the incumbent or minister, will be liable. The defendants were the trustees of a

Note to
Section 151.

chapel consisting of two floors. The upper floor was the chapel itself, and the lower contained a lecture hall and several smaller rooms. The upper floor was exclusively appropriated to public religious worship, and the premises as a whole were registered as a place of religious worship. The lecture hall was used for the purposes of a Sunday school and of an institute, the members of the latter paying a subscription, and lectures and concerts were from time to time given in the hall in connection with the institute, for which tickets were sold to persons who were not members; but the money received did not cover the cost of the entertainments. A bazaar and sale of work had also been held in the lecture hall, when a charge was made for admission. The money realised from the bazaar was handed to the defendant B., and appropriated by him to the chapel building fund, and the proceeds of the sale of work were devoted to the purchase of a piano for the institute. The defendants, who had no beneficial interest in the chapel, having failed to comply with a notice under s. 150 requiring them to pave the street upon which the chapel abutted, the complainants executed the work, and obtained an order of justices for repayment by the defendants of the expenses incurred. It was held that the defendants were the "owners" of the premises; that they were not within the exemption given by this section; and that the order of the justices was, therefore, rightly made (*Brewis v. Hornsey L. B.* (1890), 55 J. P. 389; 60 L. J. M. C. 48; 26 Digest 522, 2233). Section 16 of the Private Street Works Act, 1892, *post*, p. 4865, specially provides for similar cases where that Act is in force.

Certain premises were formerly used as a church. A new church having been built on another site, Sunday services were held only in the new building. The old premises were used on Sunday for a Sunday school, and on week-day evenings for services and class meetings. A debating society met upon the premises once a week free of charge. Once a month a Rechabites society met in the vestry and paid £1 per annum for fuel and lighting. On one occasion a political meeting had been held on the premises, the organisers paying 2s. 6d. for light and heat. There had also been held on the premises an "At Home" in connection with church work, for which there was a charge for admission; and a dramatic entertainment for which there was a charge for admission. On each occasion the premises were open to the public, and the moneys paid for admission were received by the owners and used by them for current expenses, and to liquidate the debt on the new church. The premises had not in fact been rated for the relief of the poor. It was held that the premises were not exclusively appropriated to public religious worship; that they were not by law exempt from poor rate, and, therefore, were not exempt from private street works expenses under s. 16 of the Private Street Works Act, 1892, *post*, p. 4865 (*Walton-le-Dale U. D. C. v. Greenwood* (1911), 75 J. P. 541; 105 L. T. 547; 26 Digest 542, 2405). A catholic church which was divided by a moveable partition into "blessed" and "unblessed" portions, the partition being removed for religious services, but the unblessed portion of which was from time to time used for dances for which charges were made for admission, was held not exclusively appropriated to public religious worship and therefore not exempt from rates (*Cardiff Archdiocese Trustees v. Pontypridd Area Assessment Committee, etc.* (1930), 94 J. P. 246; 28 L. G. R. 535; Digest Supp.). Under the corresponding Scotch enactment it has been held that church and mission halls sometimes used for temperance meetings and for congregational social meetings are not "exclusively" appropriated to public religious worship, and do not fall within the exemption (*Trustees of College Street United Free Church v. Parish Council of Edinburgh* (1901), 3 F. (Ct. of Sess.) 414). For a decision under a differently worded Irish Act, see *R. v. Belfast (Recorder)*, [1913] 2 I. R. 439; 38 Digest 463, *m*.

The words "place" and "premises" as used in the equivalent section of the Private Street Works Act, 1892, *post*, p. 4865, refer to buildings only and do not include a piece of vacant land on which it was intended to erect a Sunday school communicating by corridor with a chapel (*Ilford Corpn. v. Mallinson* (1932), 96 J. P. 185; 147 L. T. 37; Digest Supp.). It was held that there was no evidence on which it could be held that the land was within the curtilage of or formed part of the site of the chapel.

Under a local Act which required the churchwardens or chapelwardens for the time being of any parochial church or chapel to pay the paving rates assessed upon such church or chapel, it was held that a district church erected under New Parishes

**Note to
Section 151.**

Churches and
chapels in
metropolis.

Act, 1843 (6 Halsbury's Statutes 123), was not exempt from being rated, and that the churchwardens were liable to pay the rates although they had no parochial funds for that purpose (*Mills v. Rydon* (1854), 10 Exch. 67; 18 J. P. 633; 19 Digest 291, 829).

There is no such exemption as this in the metropolis. The trustees of a dissenting chapel were held liable under Metropolis Management Act, 1855, s. 105 (11 Halsbury's Statutes 909) (*Caiger v. St. Mary, Islington* (1881), 45 J. P. 570; 50 L. J. M. C. 59; 26 Digest 491, 2017; *Wright v. Ingle* (1885), 16 Q. B. D. 379; 50 J. P. 436; 26 Digest 491, 2018). But it was otherwise held with respect to a church which was consecrated and so dedicated to permanent and unalterable uses (*Angell v. Paddington (Vestry of)* (1868), L. R. 3 Q. B. 714; 32 J. P. 742; 26 Digest 491, 2014). In the case of a cemetery, part of which was consecrated, belonging to a company, such company were held liable (*St. Giles, Camberwell (Vestry of) v. London Cemetery Co.*, [1894] 1 Q. B. 699; 58 J. P. 382; 26 Digest 492, 2021).

Schools.

By the Church Building Act, 1845, s. 13 (6 Halsbury's Statutes 855), the "freehold of the site of every church" of which the commissioners therein mentioned shall accept a conveyance under the Church Building Acts (as to any church not yet consecrated, when the same shall be consecrated), shall vest in the incumbent. Land having been conveyed under the Church Building Acts to the Ecclesiastical Commissioners as a site for a church, a church was afterwards erected on a part of the land, and the church and a part only of the land were consecrated. It was held that upon such consecration the whole of the land so conveyed to the commissioners vested in the incumbent; that the commissioners ceased to be the "owners" of it, and were, therefore, not liable under the Metropolis Management Acts, 1855 and 1862 (11 Halsbury's Statutes 889, 965), to contribute in respect of it towards the cost of paying a new street (*Plumstead District Board of Works v. Ecclesiastical Commissioners*, [1891] 2 Q. B. 361; 55 J. P. 791; 26 Digest 491, 2015).

It was decided in *Bowditch v. Wakefield L. B.* (1871), L. R. 6 Q. B. 567; 36 J. P. 197; 26 Digest 523, 2234, that a "national" school was not exempt, and that one of the trustees was liable to pay the proportion of the expenses in respect of such school. This decision was followed in *Hornsey U. D. C. v. Smith*, [1897] 1 Ch. 843; 76 L. T. 431; 26 Digest 523, 2235; if, however, the school site was conveyed under the School Sites Act, 1841 (7 Halsbury's Statutes 274), difficulty may be experienced in seeking to make effective a charge upon the school (*ibid.*). A local education authority are also liable in respect of their schools (*London School Board v. St. Mary, Islington (Vestry of)* (1875), 1 Q. B. D. 65; 40 J. P. 310; 26 Digest 493, 2029). Sunday and Ragged Schools (Exemption from Rating) Act, 1869 (14 Halsbury's Statutes 545), provides that every authority having power to impose or levy any rate upon the occupier of any building used exclusively as a Sunday school or ragged school may exempt such building or part of a building from any rate for any purpose whatever which such authority has power to impose or levy. The exercise of this power is discretionary: see *Bell v. Crane* (1873), L. R. 8 Q. B. 481; 37 J. P. 711; 38 Digest 470, 318; and *quære* whether the proportion of expenses under s. 150 is a rate within the meaning of this Act.

Burial
grounds.

By the Education Act, 1921, s. 167 (1) (7 Halsbury's Statutes 211), no person shall be assessed or rated to or for any local rate in respect of any land or buildings used exclusively or mainly for the purposes of the schoolrooms, offices or playground of a public elementary school not provided by the local education authority, except to the extent of any profit derived by the managers of the school from the letting thereof. By sub-s. (2), "local rate" in that section means "a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a local rate as before defined." The apportioned expenses of making up a street clearly do not fall within the definition, and therefore the decisions in *Bowditch v. Wakefield L. B.*, and *Hornsey U. D. C. v. Smith*, *supra*, are still law.

(b) A burial ground not "attached to" any church or chapel is not exempt under this section, though partially exempt from local rates under Burial Act, 1855, s. 15 (2 Halsbury's Statutes 223). In *Holy Law South Broughton Burial Board v. Failsworth U. D. C.*, [1928] 1 K. B. 231; 91 J. P. 104; Digest Supp., it was held that a burial ground vested in trustees upon trust to permit it to be used for the

members of two synagogues in a city and others, but five miles distant from each of the synagogues is not "attached to" the synagogues or either of them within the meaning of this section. *Per* LORD HEWART, C.J., "The whole scheme and framework of this section make it plain that what is being considered is physical connection or contiguity. It may well be that that is not enough and that the churchyard or burial grounds in addition to having a physical connection and contiguity with the church, chapel or place appropriated to public religious worship which is exempt from rates must be the churchyard or burial ground of that particular church, chapel or place" (at p. 236).

(c) The previous section requires the authority to give notice to the owner or occupier of the premises to make the street, and in their default empowers them to do the work themselves. This proviso, therefore, deals with the case where, the minister being exempt, there may be no owner liable to do the work, and consequently no default. Under the Private Street Works Act, 1892, s. 16, *post*, p. 4865, the authority, where that Act is in force, are bound to pay the proportion of expenses in respect of which an exemption under that section is allowed.

152. When any street within any urban district not being a highway repairable by the inhabitants at large (a) has been sewered levelled paved flagged metalled channelled and made good and provided with proper means of lighting to the satisfaction of the urban authority (b), such authority may (c), if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large (d); and every such notice shall be entered among the proceedings of the urban authority.

Power to declare private streets when sewered, etc., to be highways.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor or the majority in number of proprietors (e) of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor (e).

Where the P. H. A., 1890, s. 41, *post*, p. 4815, is in force by adoption, the above section is repealed, and the provisions of s. 41 are substituted in lieu thereof.

See also the P. H. A., 1907, s. 19, *post*, p. 5045, and the P. H. A., 1925, s. 82, Vol. V. and 13 Halsbury's Statutes 1153.

(a) As to the meaning of these words, see *ante*, pp. 1947, 4393 *et seq.*

(b) Note the use of the copulative. This section is not a complement to s. 150, *ante*, p. 4388. In order that an authority may declare a street not repairable by the inhabitants at large to be a highway, so that it may become so repairable, it is necessary that each of the works specified in s. 152 shall, at the time of declaration, have been executed upon the street to the satisfaction of the authority. An authority has not, under this section, any discretion as to which of the works mentioned in it they will require to be executed: their discretion is limited to being satisfied with the efficiency of each description of work when done. In *Att.-Gen. v. Bidder* (1881), 47 J. P. 263; 26 Digest 374, 996, it was suggested, if not decided, that kerbing a road did not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and that wooden paving did not come within the meaning of any of the requirements of the section. But now, by the P. H. A., 1890, s. 11 (2), *post*, p. 4806, a street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind, shall be deemed to have been paved within the meaning of the Public Health Acts: Provided that a street shall not be deemed to be paved to the satisfaction of the urban authority, unless it is paved with such kind of paving as the local authority shall consider suitable for the street. Compare the Private Street Works Act, 1892, s. 5, *post*, p. 4850. And see *Allen v. Fulham Vestry* (1898), 62 J. P. 548; 79 L. T. 190. Where s. 19 of the Act of 1892, *post*, p. 4866, is in force, it is not necessary that all the works in the Act mentioned should have been executed before the street is adopted; nor is it necessary where Part III. of the P. H. A., 1890, has been adopted, if the partial works have been executed by the authority.

All the specified works must be done.

Note to
Section 152.

In *Saunders v. Bradling Harbour Improvement Railway and Works Co.* (1885), 52 L. T. 426; 42 Digest 524, 883, the defendants agreed to construct a road over land of the plaintiff, who was to grant the defendants a right of way over the road when completed, and to permit it to be declared a public highway by the local board. The defendants were to make the road according to a plan and specification already approved by the local board, and to do all things necessary to carry out a resolution passed by the board that the road should six months after completion to their satisfaction be declared by the board a public highway. The specification provided that the pathways should be gravelled, and did not provide for means of lighting. After completion of the road the board were advised that the road did not comply with the requirements of this section, inasmuch as it was not flagged nor provided with means of lighting, and they withheld their sanction to its being declared a public highway. The plaintiff brought an action claiming specific performance by the defendants of the agreement on the ground that they had not done all things necessary to enable the board to declare the road a public highway:—*Held*, that inasmuch as to compel the defendants to construct the road so as to conform with the provisions of the Act would be to enforce performance of terms at variance with the agreement and entirely outside the contemplation of the parties, specific performance could not be ordered. Whether the plaintiff would have been entitled to damages if any had been shown, *quære*.

(c) If such a notice has been posted, it cannot subsequently be alleged that the works had not been done to the satisfaction of the authority (*Finney v. Birkenhead Corporation*, *ante*, p. 4410). Under the Private Street Works Act, 1892, s. 20, *post*, p. 4867 (if in force), an authority may be compelled to "take over" a street. See also the P. H. A., 1907, s. 19, *post*, p. 5045. Where notices have been served under s. 150, *ante*, since September 8th, 1928, the local authority may be compelled by the frontagers to declare the street a highway repairable by the inhabitants at large if all the works specified in the section have been done to the satisfaction of the local authority (s. 82, P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1153).

(d) This is a substitute for the provision in the Highway Act, 1835, s. 23 (9 Halsbury's Statutes 59), relating to the dedication of roads to the public. A landowner in a district under the P. H. A., 1848, gave notice to the local board of his intention to dedicate a certain road as a highway, to which the board replied that they would not adopt the road, as it had not been sewered, levelled, paved, flagged, and channelled to their satisfaction. The landowner, however, obtained and enrolled a certificate of two justices under the Highway Act, 1835, s. 23, and the public then used the road, which was kept in repair by the landowner for twelve months; after which, it being out of repair, an indictment was preferred against the parish. It was held that the inhabitants were not liable, for assuming s. 23 to apply to the case, the road had not been made to the satisfaction of the local board who were the surveyors. WIGHTMAN, J., expressed an opinion that s. 23 was not inconsistent with the P. H. A., 1848, for the board had a discretion as to the amount and kind of repairs to be done to the road, and they might require it to be paved, etc., having regard to the sections of the Act of 1848 corresponding with ss. 150, 152 (*R. v. Dukinfield* (1863), 4 B. & S. 158; 27 J. P. 805; 26 Digest 362, 873).

No right or liability to repair on the part of a highway authority exists in the case of a road dedicated to the public since August 30th, 1835, unless it has been dedicated or "taken over" in accordance with the Highway Act, 1835, s. 23, this section, one of the other enactments mentioned on p. 1949, or some statutory inclosure award or local Act (*Eyre v. New Forest Highway Board* (1892), 56 J. P. 517; 26 Digest 260, 5). See *Leigh U. D. C. v. King*, and *Cababé v. Walton-on-Thames U. D. C.*, p. 1951, *ante*, as to presuming compliance with statutory formalities; and see generally upon the subject of public liability to repair, pp. 1947 *et seq.*, *ante*. As to the repair of diverted or substituted roads, see p. 1951, *ante*.

Where a road carried over a bridge, constructed by the estate owner in laying out the road, is declared a highway repairable by the inhabitants at large under this section, the local authority are liable for the repair of the bridge as part of the highway (*Att.-Gen. v. Hornsey B. C.*, [1927] 1 Ch. 331; 91 J. P. 61; Digest Supp.). See also *Regents Canal and Docks Co. v. Gibbons*, [1925] 1 K. B. 81; 89 J. P. 4; 26 Digest 579, 2696, where a declaration under this section was held to release a liability under a contract to repair a bridge until "taken over" by the local authority.

Dedication
under
Highway
Act, 1835,
s. 23.

The fact that a private road has been made up at the cost of the frontagers does not, if it is not declared a highway, give a frontager any right of access to it which he did not already possess (*Moubray, Rowan and Hicks v. Drew*, [1893] A. C. 295; 26 Digest 518, b). Note to Section 152.

(e) There is no definition of the word *proprietor*, which is not a legal term having any distinct meaning. See *Lister v. Lobley* (1837), 7 Ad. & El. 124; 1 J. P. 309, tors' power where it was held, in a clause giving compensation to owners or proprietors, that these words applied not only to the owners in fee simple, but to lessees for terms of years also. In *Rossiter v. Miller* (1877), 5 Ch. D. 648, JESSEL, M.R., said: "Is there any doubt that, according to ordinary language, the word *proprietors* means *owners*, and the word *owners*, proprietors?" Having regard to this and the preceding sections, the word as used in the text is probably equivalent to *owners*; and probably it means the owners of the soil of the street and not the frontagers in a case where the latter do not also own the actual street. See *Steward v. Metropolitan Electric Tramways, Ltd.*, in notes to the P. H. A., 1890, s. 41 (2), *post*, p. 4816.

Where any part of a street belongs to two or more persons as joint tenants, they can give one vote between them; each person who owns a part in severalty can give one vote.

It is presumed that an objection may be withdrawn, and a declaration then made.

153. Where for any purpose of this Act any urban authority deem it necessary (a) to raise sink or otherwise alter the situation of any water or gas pipes mains plugs or other waterworks (b) or gasworks laid in or under any street (b), they may by notice in writing (c) require the owner of the pipes mains plugs or works to raise sink or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required (d): Power to require gas and water pipes to be moved.

Provided—

That no such alteration shall be required or made which will permanently (e) injure any such pipes mains plugs or works or prevent the water or gas from flowing as freely and conveniently as usual; and

That where under any local Act of Parliament the expenses of or connected with the raising sinking or otherwise altering the situation of any water or gas pipes mains plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

(a) The power conferred by this section apparently imposes no liability upon an authority, if they cause the level of a street to be lowered under s. 149, *ante*, p. 4375, to lower to a corresponding extent the pipes in the street (*Southwark and Vauxhall Water Co. v. Wandsworth District Board*, [1898] 2 Ch. 603; 62 J. P. 756; 26 Digest 488, 1997). If the level of a gas main is altered in executing private street works, the cost of the alteration must be borne under this section and cannot be charged to the frontagers (*Re Jesty's Avenue, Broadway, Weymouth*, [1940] 2 K. B. 68; [1940] 2 All E. R. 634; 104 J. P. 279; Digest Supp.).

(b) For definitions of *waterworks* and *street*, see s. 4, *ante*, p. 4331, and also *ante*, p. 716.

(c) See, as to the authentication and service of the notices, ss. 266, 267, *post*, pp. 4494 *et seq.*

(d) At their own expense.

(e) In the case of slight or temporary injury compensation may be claimable under s. 308, *post*, p. 4515. Reference may also be made to L. G. A., 1929, s. 39, Vol. V. and 10 Halsbury's Statutes 913.

Section 154.

Power to
purchase
premises for
improvement
of streets.

154. Any urban authority may purchase any premises (a) for the purpose of widening opening enlarging or otherwise improving any street (b), or (with the sanction of the Local Government Board (c)) for the purpose of making any new street (d).

In rural districts and in relation to "county roads" in urban districts (including non-county boroughs) this section is applied to county councils subject to the deletion of the words "with the sanction of the Local Government Board," and as if the word "street" included "county roads" and "county bridges" (Sched. I., Pts. I. and III., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975, 977).

Functions under this section are, therefore, no longer exercisable by rural district councils, where an order has been made under s. 276, *post*, applying the section to the district (s. 30 (3), L. G. A., 1929, Vol. V., *post*), except in the case of delegation by the county council under s. 35, *ibid.*, and in that event the section will apply in its amended form, for the rural district council will only be acting as "agents" for the county council and must act in accordance with the terms of the delegation.

Councils of urban districts with a population not exceeding 20,000 are in respect to "county roads" in their district in exactly the same position as rural district councils.

Councils of urban districts of a greater population than 20,000 may in relation to "county roads" "claimed" by them under s. 32 of the L. G. A., 1929, Vol. V., *post*, function under this section as if the "county road" were an ordinary road vested in them.

In relation to all roads in their district other than county roads the powers of an urban district council under this section remain unchanged and the amendment above referred to is not operative.

Section 176 (13 Halsbury's Statutes 700) was similarly applied to county councils so far as might be required for the purposes of this section. See now s. 160 of the L. G. A., 1933, *ante*, p. 978.

By s. 83 of the P. H. A., 1925, Vol. V., *post*, "the improvement and development of frontages or of the lands abutting on or adjacent to any street" is to be deemed to be one of the purposes for which premises may be acquired under this section. As a fact, however, for many years prior to 1925 the M. of H. and their predecessors had interpreted s. 154 in this wide sense and had even allowed lands which would not abut upon a widened street to be included in Provisional Orders for compulsory purchase (under s. 176). The correctness of this practice having been questioned when the Bill for the 1925 Act was in preparation, s. 83 was inserted to remove the doubt.

A somewhat similar power as regards the widening of streets is conferred upon urban authorities by s. 160 (2), *post*, p. 4444. Highway authorities had similar powers under s. 82 of the Highway Act, 1835 (9 Halsbury's Statutes 94), and ss. 47, 48 of the Highway Act, 1864 (9 Halsbury's Statutes 158, 160). Reference may also be made to the Development and Road Improvement Funds Act, 1909, *post*, p. 5105, under which extended powers of acquiring land for highway purposes are conferred, and to the Public Works Facilities Act, 1930 (Vol. V. and 23 Halsbury's Statutes 769), which provides a speedy machinery for acquiring land.

Under the L. G. A., 1894, s. 8, parish councils have certain powers for the acquisition of rights-of-way, and for the execution of works incidental to the execution of these and other powers. As to the construction of a new road by a parish council under these provisions, see notes to s. 8 of the Act of 1894, *post*, p. 4896.

Purchase of
land.

(a) The word "purchase" includes "gift." If, therefore, land is given for the purposes of a new street, the sanction of the M. of H. should, in strictness, be obtained. A distinct power to accept gifts, however, now exists under the L. G. A., 1933, s. 268, *ante*, p. 1148. Under the Crown Lands Act, 1906, the Commissioners of Crown Lands may convey to a local authority land required for the purpose of widening, or improving, any bridge, including the approaches thereto and abutments thereof. See also ss. 10, 11 and 12 of the Crown Lands Act, 1927 (3 Halsbury's Statutes 335, 336).

See the definition of "premises" in s. 4, *ante*, p. 4335.

See *St. Nicholas, Leicester v. Langton*, [1899] P. 19; 7 Digest 556, 326; *Re St. Anne's, Soho* (1900), Times, July 20th; *Re Bideford Parish, Ex parte Bideford (Rector, etc.)*, [1900] P. 314; 64 J. P. 743; 7 Digest 556, 330; *Sutton v. Bowden*, [1913] 1 Ch. 518; 19 Digest 356, 1737; *Re St. Mary Abbot* (1914), Times, May 4th; *Ex parte Uxbridge U. D. C.* (1914), 30 T. L. R. 448; 7 Digest 556, 331; and *Re St.*

Anne Limehouse (1915), 31 T. L. R. 539; 7 Digest 557, 332, as to the grant of a faculty for widening a street by taking in a strip of a churchyard.

Note to
Section 154.

In a case arising under the Metropolis Management Acts it was held that a borough council has power to enter into an agreement with a landowner, as part of a scheme for widening a road, to remove a sign-post belonging to him to a position on the edge of the public footpath (*Hoare & Co., Ltd. v. Lewisham Borough Council* (1903), 67 J. P. 20; 87 L. T. 464; 26 Digest 488, 1998).

For the general power to purchase lands, see now L. G. A., 1933, Part VII., *ante*, p. 973. Under the corresponding provision in the P. H. A., 1848, s. 73, land could only be purchased by agreement, and the urban authority had no compulsory powers. See *Frewen v. Hastings L. B.* (1867), 16 L. T. 553. Land may be acquired compulsorily for purposes of this section. Whether land is purchased by agreement or compulsorily it would appear that the vendor is entitled to insist on the council taking a duly executed conveyance of the land (*Great Hospital Trustees v. Norwich Corporation*, Local Government Chronicle, 1885, p. 860; *In re Cary-Elwes' Contract*, [1906] 2 Ch. 143; 70 J. P. 345; 17 Digest 232, 470). And, although a purchasing council are entitled generally to say by what description land purchased shall be vested in them, the vendor may require the description to be such as to give effect to the true contract (*Monighetti v. Wandsworth Borough Council* (1909), 73 J. P. 91; 40 Digest 277, 2414).

The authority must in every case acquire the freehold of the premises or obtain the freeholder's consent to the land being thrown into the street. The M. of H. would not otherwise sanction any loan for the scheme.

In a borough any surplus of the general rate fund (which is now by the R. and V. A., 1925, s. 10, *ante*, p. 2140, substituted for the borough fund) may, under the L. G. A., 1933, s. 185 (3), *ante*, p. 1013, be applied for the improvement of the borough.

Though the authority can, under this section, add land to a highway, they cannot take away any land from the highway, even if such land has, by reason of a part added, become unnecessary. A highway cannot, generally speaking, be stopped up or diverted except pursuant to the Highway Act, 1835, ss. 84—91 (9 Halsbury's Statutes 97—103) (*R. v. Platts* (1880), 44 J. P. 765; 49 L. J. Q. B. 848; 26 Digest 275, 129). Under special circumstances, however, highways may be interfered with under the Church Building Act, 1819 (6 Halsbury's Statutes 729); the Defence Act, 1860 (3 Halsbury's Statutes 488); Inclosure Acts; the Military Lands Act, 1892 (17 Halsbury's Statutes 574); the Military Manœuvres Acts, 1897 and 1911 (17 Halsbury's Statutes 591, 601), and Railway Acts. S. 46 of the Housing Act, 1936, *ante*, p. 1656, provides for the extinguishment of public rights of way over land acquired under Part III. of that Act.

A town council, in connection with a street widening, proposed to exchange land forming part of the existing highway for other land required for the improvement. The L. G. B. pointed out that before the scheme could be carried out an order of justices was necessary under the Highway Act, 1835, ss. 85 *et seq.* (9 Halsbury's Statutes 99 *et seq.*). They referred to *Coverdale v. Charlton* (1878), 4 Q. B. D. 104; 43 J. P. 268; 26 Digest 329, 616, and *Rolls v. St. George-the-Martyr, Southwark* (1880), 14 Ch. D. 785; 44 J. P. 680; 26 Digest 330, 627, and observed that it was not clear to them, that, even if an order for diversion was made, the council would possess such rights over the soil of the disused part of the highway as would enable them to exchange it for other land. It seemed to the Board that on the present roadway being legally stopped up the adjoining owner would without further action be the owner of the soil discharged of the right of the public to pass over it.

Where an authority acting under this section make a new street it must be kept in repair by them, and they cannot subsequently make it up at the cost of the frontagers (*Hull L. B. of Health v. Jones* (1856), 21 J. P. 37; 1 H. & N. 489; 26 Digest 520, 2212). So, too, if by purchase, or by an agreement equivalent to purchase, they widen an old street repairable by them, they must keep in repair the added strip. In 1883, the owners of an estate, through which ran an ancient highway about thirty feet wide, repairable by the inhabitants at large, agreed with the local authority that as and when the estate should be laid out for building the owners would straighten and lay out the road so as to make it forty feet wide. The agreement recited that it was entered into for the purpose of settling a question which had arisen as to the width of the road. When the whole of the road had been laid

Liability
for future
maintenance
of new or
widened
street.

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Section 154.

out in accordance with the agreement, the authority made it up and sought to charge the frontagers, under s. 150, with the cost of so doing. It was held that the agreement amounted to a purchase by the authority under s. 154 of the land thrown in to widen the road, and the frontagers were not liable (*Portsmouth Corporation v. Hall* (1909), 71 J. P. 564; 98 L. T. 513; 26 Digest 521, 2219). A contract by which an owner agrees to throw land into a street and the authority agree to adopt and make up the added strip should be under seal; otherwise the owner cannot obtain specific performance (*Hoare v. Kingsbury U. D. C.*, [1912] 2 Ch. 452; 76 J. P. 401; 13 Digest 384, 1127).

As regards the liability to make up strips of land thrown into a street, reference might also be made to the cases referred to, *ante*, at pp. 4418—20. See also the notes to ss. 30 and 31, P. H. A., 1925, Vol. V., *post*.

Metropolitan
decisions.

Reference may be made to the corresponding powers of borough councils in the metropolis or of the common council of the city of London, as to which see *Teuliere v. St. Mary Abbots, Kensington (Vestry of)* (1885), 30 Ch. D. 642; 50 J. P. 53; 11 Digest 296, 2254; *Gard v. City of London Sewers Comrs.* (1885), 28 Ch. D. 486; 11 Digest 117, 111; *Lynch v. City of London Sewers Comrs.* (1886), 32 Ch. D. 72; 50 J. P. 548; 11 Digest 295, 2252; *Gordon v. St. Mary Abbots, Kensington (Vestry of)*, [1894] 2 Q. B. 742; 58 J. P. 463; 11 Digest 296, 2262; *Aldis v. London (Corporation of)*, [1899] 2 Ch. 169; 63 J. P. 376; *Fernley v. Limehouse District Board* (1900), 64 J. P. 328; 82 L. T. 524; *Gibbon v. Paddington Vestry*, [1900] 2 Ch. 794; 64 J. P. 727; 69 L. J. Ch. 746; *Parry v. Hammersmith Borough Council* (1904), 69 J. P. 35; 92 L. T. 161; *Pescod v. Westminster Corporation*, [1905] 2 Ch. 475; 69 J. P. 387; *Thompson v. Hammersmith Borough Council*, [1906] 1 Ch. 299; 70 J. P. 100; *Denman & Co., Ltd. v. Westminster Corporation and Cording & Co., Ltd. v. Westminster Corporation*, [1906] 1 Ch. 464; 70 J. P. 185; *Wild v. Woolwich Borough Council*, [1910] 1 Ch. 35; 74 J. P. 33; 11 Digest 176, 550; *Green v. Hackney Corporation*, [1910] 2 Ch. 105; 74 J. P. 278; *Davies v. City of London Corporation*, [1913] 1 Ch. 415; 77 J. P. 294; *Beufus v. City of Westminster* (1914), 79 J. P. 111; 13 L. G. R. 40; *Re South Eastern Ry. Co. and L. C. C.*, [1914] 2 Ch. 252; 79 J. P. 545; 11 Digest 124, 156.

For a case where it was alleged that the claim to purchase land for the purpose stated was not *bonâ fide*, see *Marquess of Clanricarde v. Congested Districts Board for Ireland* (1914), 79 J. P. 481; 49 Ir. L. T. 42; 11 Digest 118, 116.

(b) See the definition in s. 4, *ante*, p. 4336. See also note (b) to s. 150, *ante*, p. 4390. It will be seen that a council are not precluded from incurring expense in acquiring lands for the widening of a street by the fact that the street is not repairable by the inhabitants at large. But, presumably, the public must possess, or be about to obtain, an indefeasible right of way over it. As to the widening and improvement of county roads, see the L. G. A., 1929, Pt. III., and notes thereto, Vol. V., *post*.

(c) The sanction required is now that of the Ministry of Health (see note (d), *infra*). Application should be by resolution of the council of which a copy should be forwarded with plans of the proposed improvement. Such applications are usually combined with proposals to borrow money. No sanction is required by a county council or by a district council acting as agents of the county council under a delegation under s. 35, L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 910.

(d) It may be noted that in questions of highway improvement and the formation of new roads the Ministry of Health now act in consultation with the Ministry of Transport. See the Ministry of Transport Act, 1919 (*post*, p. 5195), and notes thereto.

It is essential that the proposed new street should comply with the byelaws in force in the district as to new streets (see s. 157, *post*, p. 4432), but the M. of H. has, on occasion, confirmed a special exempting byelaw in order to regularise a street of less than the width required by the local authority's byelaws.

Power to
regulate line
of buildings.

155. When any house (a) or building situated in any street (b) in an urban district, or the front thereof (bb), has been taken down (c), in order to be rebuilt or altered, the urban authority may prescribe the line (d) in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith (e).

The urban authority shall pay or tender compensation to the

owner (f) or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act (g). Section 155.

See the proviso as to railway buildings in s. 157, *post*, p. 4433.

Neither this section nor the P. H. (Building in Streets) Act, 1888, *post*, p. 4777, enables a local authority to prescribe a building line in anticipation of future development.

"Building lines" may now, however, be prescribed under s. 5 of the Roads Improvement Act, 1925, Vol. V., *post*, and "improvement lines" in districts where s. 33 of the P. H. A., 1925, has been adopted. The distinction between "building lines" and "improvement lines" is explained in the notes to s. 33 of the P. H. A., 1925, Vol. V., *post*. References may also be made to ss. 30 and 31 of the P. H. A., 1925, under which local authorities may in certain circumstances require highways to be widened by persons building on land adjoining thereto.

(a) See the definition of *house* in s. 4, *ante*, p. 4341.

(b) For the definition of a *street*, see s. 4, *ante*, p. 4336. See also note (c) under s. 3 of the Public Health (Building in Streets) Act, 1888, *post*, p. 4778. The word "street" is apparently used here in its ordinary sense of a road with buildings on each side.

(bb) As to what constitutes the "front," see *Att.-Gen. v. Price's Tailors* (1928) *Ltd.*, [1930] 2 Ch. 316; 94 J. P. 226; Digest Supp.

(c) This means "substantially taken down." See *Att.-Gen. v. Hatch*, *post*, Buildings p. 4430. The words "taken down" do not seem applicable to the case of buildings destroyed by fire or other casualty (*cf.* s. 23 of the London Building Act, 1930 (23 fire, etc. Halsbury's Statutes 213)). If so, then apparently s. 3 of the Public Health (Buildings in Streets) Act, 1888, *post*, p. 4778, would be applicable, and it may be that no compensation would be payable for setting back.

As to the liability of owners under a local Act, relating to the "taking down to be rebuilt or repaired of part of a front wall," for an alteration not intended by them, and made by builders without their knowledge or instructions, see *Yabbicom v. Bristol Brewery, Ltd.* (1903), 67 J. P. 261; 1 L. G. R. 477; 26 Digest 565, 2592.

(d) The "line" of a street need not be a strict mathematical line; it means substantially such a line as shall preserve uniformity of appearance (*per* WILLES, of a building *J.*, in *Tear* (or *Fear*, or *Sear*) *v. Freebody* (1858), 4 C. B. (n.s.), at p. 262; 22 J. P. 707; line. 26 Digest 501, 2086).

The corporation of F. had power under a local Act to prescribe the line in which any house to be thereafter built or taken down for the purpose of being rebuilt or altered should be erected, on payment of compensation to the owner of any house required to be set back; it was also provided that no new street to be thereafter laid out should be of less width than 40 feet, inclusive of footways, and, in the case of existing streets, houses to be thereafter erected were to be set back so as to allow of a width of 40 feet. A temporary church, fronting a road less than 40 feet wide, having been pulled down with a view to erecting a permanent church, the corporation gave notice to the clergyman in charge of a resolution passed by them that the road must be not less than 40 feet wide; but there was no statement that the additional width was to be gained on the side on which the church abutted, and it appeared that the street might have been widened on the side opposite without removing any buildings. Afterwards, but not until the foundations of the new church had been put in, the corporation prescribed a building line which intersected the church as designed:—*Held*, that they were too late, and could not restrain the erection of the church in the manner in which it had been commenced (*Folkestone Corporation v. Woodward* (1872), L. R. 15 Eq. 159; 37 J. P. 324; 26 Digest 564, 2590).

Where a building has been taken down to be rebuilt, a building line may be prescribed under this section for any portion of it which has not been commenced, although other portions of it have been commenced, unless the portion commenced necessarily involves as a matter of construction a projection beyond the line afterwards prescribed. The defendants, being about to pull down a school and erect a new one, submitted plans to the local board. The local board objected to the plans, giving as a reason that they violated a byelaw requiring a person laying out

Note to
Section 155.

a street to lay it out of a certain width. This byelaw was not applicable, as South Lane, on which the school fronted, was not a new street. The defendants disregarded the objection, commenced their works on January 5th, laid the foundations of the main wall towards South Lane on the 12th, and proceeded rapidly with the erection of it. On January 22nd the local board prescribed a building line which did not interfere with the main wall, but would prevent the erection of certain annexes not then commenced, lying between South Lane and the main wall, which annexes were shown on the plans laid before the board. The defendants had ground enough to allow of the annexes being erected elsewhere. The defendants proceeded with the annexes, and the board brought an action to restrain them from building beyond the line, and to compel them to pull down what they had built beyond it. It was held that the commencement of the main building did not preclude the board from laying down a line which would prevent the erection of the annexes which had not then been commenced. It was held also that as the notice given by the board, though ineffectual for the purpose of empowering them to pull down the erection under s. 158, *post*, p. 4442, gave the defendants to understand that the board objected on the ground that buildings according to the plan would make the street too narrow, the board had not done anything to induce the defendants to believe that they would not prescribe a building line, and that there was no equity to prevent the board from exercising their power under this section on the ground that they had misled the defendants (*Newhaven L. B. v. Newhaven School Board* (1885), 30 Ch. D. 350 ; 26 Digest 563, 2579). The principle of this case was approved in *Att.-Gen. v. Hatch*, [1893] 3 Ch. 36 ; 57 J. P. 825 ; 26 Digest 564, 2580, where, however, the main question was as to the meaning of the words "taken down," which the Court of Appeal decided meant "substantially taken down." In that case the owner of a house took out the front wall of the ground and first floors and removed the first floor in order to convert the two lower storeys into one lofty shop, which was also to be extended behind the house. The second floor was not disturbed, but was shored up with timber, afterwards replaced by iron girders and brick piers. Shortly after the erection of the girders and piers had been completed the authority prescribed a building line, and commenced an action to restrain the owner from building in front of it. It was held by KEKEWICH, J., that the house had been substantially taken down, but that the authority had not prescribed the line in time. The Court of Appeal held that the house had not been substantially taken down, and that the power to fix a building line had, therefore, never arisen.

Two adjoining houses had shops on the ground floor projecting a few feet further into the street than the upper floors. It was proposed to convert them into one shop with a single entrance from the street in a new position, and the authority made it a condition that the ground floor front should be set back to the level of the exterior wall of the upper floors on the ground that the front was being taken down within the meaning of this section. It was held that this was not so because (1) for purposes of this section the front included the exterior walls of the upper floors as well as that of the ground floor, and (2) in any event the alterations to the premises did not amount to taking down the front of the ground floor (*Att.-Gen. v. Prices' Tailors* (1928), *Ltd.*, [1930] 2 Ch. 316 ; 94 J. P. 226 ; Digest Supp.).

Scotch
"building
line" cases.

Several decisions have been given by the Court of Session in Scotland upon the provision in the corresponding Scotch Act (General Police and Improvement (Scotland) Act, 1862, s. 162), which is, however, limited to a house or building, "any part of which projects beyond the regular line of the street or beyond the front of the house or building on either side thereof." It was held that this section did not apply where the owner of a house which stood back from the line of the adjoining house proposed to bring it forward, and also that the wall and railing of his front garden (which did project beyond the line of the adjoining house) was not a "building" (*Fraser v. Kennedy* (1877), 4 R. (Ct. of Sess.) 266 ; affirmed in H. L., 15 Sc. L. R. 765). Pending the appeal the owner brought an action for damages against the commissioners in respect of their having wrongfully prevented him from proceeding with his building operations, and it was held that such an action would lie, although there was no averment of malice and want of probable cause (*Kennedy v. Fort William (Police Commissioners of)* (1877), 5 R. (Ct. of Sess.) 302 ; 28 Digest 530, q). For decisions as to the meaning of the words "regular line of the street" in the Scotch Act, see *Schulze v. Galashiels Corporation*, [1895] A. C. 666 ; 26 Digest

565, *h*; *Robertson v. Greenock Police Board* (1883), 11 R. (Ct. of Sess.) 304. In the latter case, one division of a long street consisted on one side of public buildings (with a frontage four feet back from the general line of the street) and of two adjoining houses, Nos. 2 and 4, occupied as one tenement, belonging to one proprietor (with a frontage in line with the general line of the street). In 1878 the proprietor applied for a warrant to rebuild the two houses on the same site, whereupon the commissioners served a requisition requiring the new buildings to be rebuilt four feet back, in line with the adjoining public buildings. The owner did nothing, but in 1881 he applied for a warrant to take down and rebuild No. 2, which did not adjoin the public buildings. A second requisition was then made requiring him, as owner of the house, or building numbered 2 and 4, "and which house or building, or a part thereof, is about to be altered or rebuilt, and which house or building projects four feet beyond the line" of the adjoining buildings, and beyond the line of the street from A. to B. (describing the division of the street), to set back the front of the buildings to be erected, to the line of the adjoining public buildings and of the street. In an action by the owner for a declaration that he was entitled to build up to the line of his former frontage, the court held that Nos. 2 and 4 were to be regarded as one building; that the line of the adjoining building was to be taken as the line of the street; and that, therefore, the requisition must receive effect (LORD CRAIGHILL, *diss.*, held that Nos. 2 and 4 were to be regarded as separate buildings, and that the pursuer was entitled to rebuild No. 2 on its former site, as it did not project beyond No. 4, or beyond the general line of street, of which the adjoining public buildings formed a mere fraction).

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Section 155.

(e) An erection in violation of this section may be prevented by injunction, or, Enforcement if complete, will subject the builder to an indictment. But where the owner of a of prescribed factory, being desirous of rebuilding it, submitted his plans to the local board, line. and, on the plans being approved, proceeded to pull down the factory and re-erect it according to the plans, it was held that the board could not, under the corresponding provisions of the L. G. A., 1858, s. 35, require him to set back his premises, and they were restrained from interfering (*Slee v. Bradford (Corporation of)* (1863), 27 J. P. 612; 8 L. T. 491; 26 Digest 563, 2577). In a similar case the owner of a house having, in accordance with a byelaw, left, on October 16th, a plan of an intended new building, the local board passed a resolution that the plan was approved of, and that he should be offered £40 for certain land of his thrown into the street. He refused to accept the £40, but proceeded with his works, and by October 26th had pulled down the front wall of his house. On the 27th, the board passed a resolution abandoning the terms before offered, and requiring him to set his frontage further back, notice being given under the above section. On November 27th the owner proceeded with his building, and on December 21st he was required to pull down his new building. It was held that, the board having approved a plan and having allowed the owner to pull down the front wall of his house, they could not afterwards avail themselves of the powers given by this section (*Masters v. Pentypool L. B.* (1878), 9 Ch. D. 677; 26 Digest 563, 2578).

In *Att.-Gen. v. Parish*, [1913] 2 Ch. 444; 77 J. P. 391; 26 Digest 564, 2582, the defendant, the owner of a house in P. Lane, on January 19th, deposited plans for the proposed rebuilding of the house, and its demolition was begun on January 26th. On February 5th at a meeting of the authority a plan was submitted by the surveyor showing a "street line" and "building line" for P. Lane, and a resolution was passed adopting such lines; it was further resolved that the defendant's plans be disapproved as not complying with the building line and certain byelaws. On February 15th the clerk wrote informing the defendant of the latter resolution. On February 24th the defendant's architect informed the clerk that he could not agree to the building line, and on February 26th the foundations of the new house were laid. On the same day the clerk wrote drawing the defendant's attention to the responsibility attaching to building contrary to a prescribed line. On March 12th the surveyor wrote giving the defendant formal notice not to proceed with the building, as the erection did not comply with the prescribed building line. The building was completed on April 27th in conformity with the byelaws, but about four feet in advance of the prescribed building line. At no time did the authority tender or offer to pay compensation to the defendant or give him notice that they had prescribed the building line under s. 155, or were purporting to exercise their

**Note to
Section 155.**

powers under that section. In an action by the Attorney-General for a mandatory injunction to remove so much of the building as was in advance of the prescribed building line, it was held that the relators had duly prescribed a building line within s. 155; that there was no necessity for them to give the defendant notice that they were proceeding under that section; that the tender or payment of compensation was not a condition precedent to their taking any steps under the Act; and, the defendant having unsuccessfully challenged their right to do what they had done, that a mandatory injunction to pull down the building ought to be granted. See also *Folkestone Corporation v. Woodward and Newhaven L. B. v. Newhaven School Board*, ante, pp. 4429, 4430.

In *Sutton L. B. v. Hoare* (1894), 10 T. L. R. 586, an action brought to restrain the defendant from rebuilding his premises so as to project beyond the line prescribed by the plaintiffs, the defendant alleged that the plaintiffs in prescribing the line had not acted bona fide in the exercise of their powers, because on each side of his premises there were comparatively new houses, and the plaintiffs had not laid down any general line in that part of the street to be enforced under the compulsory powers given by s. 154, ante, p. 4425, for street widening. NORTH, J., granted an injunction as there was no obligation upon the plaintiffs to proceed under s. 154.

Petrol pumps have been held to be "erections" and "obstructions" if erected in front of a building line prescribed by a town planning scheme (*Mackenzie v. Abbott* (1926), 24 L. G. R. 444; Digest Supp.).

(f) See the definition in s. 4, ante, p. 4335.

(g) See s. 179, post, p. 4461. As to the time for tendering compensation, see *Att.-Gen. v. Parish*, ante, p. 4431. For a case as to the method of calculating the compensation payable for a portion only of a front plot abutting upon a street about to be widened, but where the back land immediately adjoining is the property of the same vendors, see *Re S. E. Rail. Co. and L. C. C.*, [1915] 2 Ch. 252; 79 J. P. 545; 11 Digest 124, 156.

Buildings not
to be brought
forward.

156. *It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street or any part thereof beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same.*

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority.

The section was repealed by the Public Health (Buildings in Streets) Act, 1888, which re-enacts it in an amended form. See the Act and notes thereto, post, p. 4777. A question arose as to whether rural authorities who were invested with the powers of s. 156 before its repeal, acquired the powers of the Act of 1888 without any further order. The L. G. B. considered the point to be a doubtful one and advised an application for a new order.

Power to
make
byelaws
respecting
new
buildings,
etc.

157. Every urban authority may make byelaws (a) with respect to the following matters; (that is to say),

- (1) With respect to the level width and construction of new streets (b),
and the provisions for the sewerage (c) thereof:

* * * * *

And they may further provide for the observance of such byelaws by enacting therein such provisions as they think necessary as to the giving of notices (e), as to the deposit of plans (f) and sections by persons intending to lay out streets . . . (d), as to inspection by the urban authority, and as to the power of such authority (subject to the

provisions of this Act) (*g*) to remove, alter, or pull down any work begun or done in contravention of such byelaws (*h*): . . . (*d*). Section 157.

The provisions . . . (*d*) of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament (*i*).

This section was extended and amended by the P. H. A., 1890, s. 23, in places where that section was in force; it was also extended by the P. H. A. A. Act, 1907, s. 24, where that section was in force, and by the P. H. (Smoke Abatement) Act, 1926, s. 5. It now deals only with byelaws relating to new streets and their sewerage (see note (*d*), *post*, p. 4438). Further provisions of the P. H. A. A. Acts, 1890 and 1907.

There are certain other provisions of the P. H. A. A., 1907, *post*, p. 5035, which must be noticed in connection with the subject; but none of them will be in force in any district until applied thereto by order of the M. of H., and an order so applying them may impose conditions or make modifications. The sections in question are: s. 15, Deposit of plan to be of no effect after certain intervals; s. 16, As to plans deposited with local authority; s. 17, Power to vary position or direction and to fix beginning and end of new streets; s. 22, Buildings at corner of streets; and s. 33, Exemption of buildings of railway companies and others.

Certain provisions of the P. H. A., 1925, Vol. V., *post*, should also be noticed. These provisions will only be in force when adopted. The sections in question, so far as they are germane to this section, are: s. 21, Prevention of water flowing on footpath; s. 22, For preventing soil, etc., from being washed into streets; s. 28, Erection of bridge forming part of new street; s. 29, Continuation of existing streets; s. 30, Declaration of street as new street; ss. 31 and 32, Width of streets in certain cases.

Section 140 of the Housing Act, 1936, *ante*, p. 1739, empowers the M. of H. to prescribe a code of building byelaws relating to the level, width and construction of the new streets. No such code has been prescribed. If it is, it will take effect only upon adoption by a local authority. Subsection (2) of the section enacts that where a local authority have approved any plans and sections for a new street subject to any conditions imposed or authorized by any byelaws in force in the area of the authority, those conditions may be enforced at any time by the authority against the owner for the time being of the lands to which the conditions relate. This enactment gives effect to a recommendation of the Departmental Committee on Building Byelaws (paragraph 68 of Cd. 9213 of 1918). Provisions of the Housing Act, 1936.

The powers of a rural district council to make byelaws with respect to the level, width and construction of new streets and the provisions for the sewerage thereof under this section are now the same as of an urban authority, since the section was applied to them by the Rural District Councils (Urban Powers) Order, 1931 (S. R. & O., 1931, No. 580). This is not affected by the transfer from such councils to the county council of the functions of highway authority for the district. So far as the powers relate to level, width, and construction, a rural district council must, however, consult with the county council before making such byelaws, and if required by the county council must make such byelaws. If a rural district council do not make such byelaws within six months of the requirement of the county council, the county council may themselves do so (s. 30 (4), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904). The section in the text is not, however, applied to county councils, and it is only in case of default by a rural district council that they may exercise the power. As the powers to be exercised are those of the rural district council the provisions of s. 184, *post*, p. 4468, and of Part XII. of the L. G. A., 1933, *ante*, pp. 1093 *et seq.*, as to the making, confirmation and publication of byelaws will apply to byelaws made by a county council under the subsection.

The M. of H. has issued model byelaws for the guidance of local authorities in making byelaws under s. 157 as modified by later legislation, and also (gratuitously) to local authorities and persons likely to be concerned with byelaws) various memoranda explaining the latest practice.

In circular letters of 1906 and 1912, and a memorandum of 1918 (printed at the end of the Report of the Departmental Committee on Building Byelaws, Cd. 9213), revision of the L. G. B. pointed out the necessity for periodically revising byelaws so as to keep them up to date in view of modern methods of construction, and so as to prevent

Note to Section 157. — their restricting building operations by any excessive stringency. The M. of H. again drew attention to this necessity in a circular letter of September 1st, 1922, and the progress achieved in bringing byelaws up to date has been recorded in successive annual reports of the Ministry since that date. In this connection it should be noted that under s. 141 of the Housing Act, 1936, *ante*, p. 1741, the M. of H. can insist upon the revocation of byelaws which he is satisfied are likely to be an unreasonable impediment to building. This enactment follows what the Departmental Committee of 1914—18 (Cd. 9213 of 1918) said was their main recommendation. Section 69 (2) of the P. H. A., 1936, *ante*, p. 245, is a parallel enactment, which, however, is confined to "building byelaws" as defined in s. 343 of that Act, *ante*, p. 688. For the history of these enactments, *vide notes, ante*, pp. 245 *et seq.*

Making, etc. of byelaws. (a) See as to the making, confirming, and publication of byelaws, Part XII. of the L. G. A., 1933, *ante*, pp. 1093 *et seq.*; and as to enforcing them, s. 251, *post*, p. 4481.

Though a local authority be otherwise empowered to make byelaws on these subjects, they may nevertheless act under this section: see s. 341, *post*, p. 4522.

Authority cannot dispense with compliance with byelaws. Unless the byelaws themselves, or some enactment, *e.g.*, s. 138 of the Housing Act, 1936, *ante*, p. 1736, or an operative planning scheme (s. 11 (1) (b) of the T. and C. P. Act, 1932, *ante*, p. 1909) give the authority a dispensing power or discretion, the authority are bound by them and cannot waive their requirements (*Baxter v. Bedford Corp.* (1885), 1 T. L. R. 424; 38 Digest 166, 119; *R. v. Newcastle-upon-Tyne (Mayor, etc., of)* (1889), 53 J. P. 788; 60 L. T. 963; 38 Digest 191, 294; *In re McIntosh and Pontypridd Improvement Co.* (1891), 61 L. J. Q. B. 164; 8 T. L. R. 128; affirmed (1892), 8 T. L. R. 203; 31 Digest 333, 4768; *Att.-Gen. v. Folkestone Corporation*, p. 4437, *post*).

The approval of an authority of plans which contravene the byelaws made by that authority is illegal and inoperative (*Yabbicom v. King*, [1899] 1 Q. B. 444; 63 J. P. 149; 38 Digest 190, 286). Even where a local Act contains in a section repealing previous byelaws a proviso saving approved plans, such saving refers only to plans legally approved (*ibid.*). This case was followed in *Wm. Bean & Sons, Ltd. v. Flaxton R. D. C.* (1928), 92 J. P. 121; Digest Supp., where s. 25 of the Housing, Town Planning, &c., Act, 1919 (13 Halsbury's Statutes 959), now spent, seems not to have been mentioned.

Ratepayers issued a writ claiming an injunction (1) to restrain the authority from approving plans deposited for a rival place of amusement and alleged to contravene the byelaws, (2) to restrain the authority from refusing to allow inspection of such plans by the plaintiffs, and (3) to restrain the owners from carrying out the plans. An *interim* injunction was refused, as to (1), because the plans had in fact been approved while the motion was pending; as to (2), because the injunction asked for was in effect mandatory, and could not be granted on an interlocutory application; and as to (3), because the Attorney-General was not a party, and an amendment would not be allowed for the purposes of an interlocutory motion (*Dover Picture Palace, Ltd. v. Dover Corporation and Others* (1913), 11 L. G. R. 971; 38 Digest 190, 288).

The fact that byelaws contain no proviso enabling an authority to make an exception in an exceptional case does not render them unreasonable and therefore invalid (*Salt v. Scott-Hall*, [1903] 2 K. B. 245; 67 J. P. 306; 38 Digest 196, 327; *Pomeroy v. Malvern U. D. C.* (1903), 67 J. P. 375; 38 Digest 197, 329). The L. G. B. and M. of H. have always opposed byelaws which reserve a discretionary power to the authority or its officers. They state that byelaws in such a form are uncertain in their operation (see cases in notes, *ante*, p. 1095, as to the necessity for "certainty" in byelaws), and that byelaws should prescribe definite requirements. If a byelaw is found not to be enforceable in practice without the exercise of a discretionary power there is strong *prima facie* ground for thinking it to be unreasonable, and to need amendment in regular form—although it is not obligatory for a local authority to prosecute for a breach so trivial that the justices would probably take advantage of the provisions of s. 1 of the Probation of Offenders Act, 1907 (11 Halsbury's Statutes 365) (*Pomeroy v. Malvern U. D. C.*, *supra*; *Leyton U. D. C. v. Chew*, [1907] 2 K. B. 283; 71 J. P. 355; 26 Digest 555, 2505; and *cf. Dunning v. Trainer* (1909), 73 J. P. 400; 101 L. T. 421; 33 Digest 364, 740). The whole question of discretionary waiver was examined at length by the departmental committee above mentioned, who after taking evidence from local authorities and others expressed the opinion (paragraph 52 of Cd. 9213 of 1918) that any special exceptions from

byelaws to meet particular cases ought to be made by byelaw, after the public notice and local deposit required (now) by s. 250 of the L. G. A., 1933, *ante*, p. 1104. Now that s. 25 of H. T. P., &c., Act, 1919 (13 Halsbury's Statutes 959), has been repealed, this method of an excepting or amending byelaw will normally be the only one available in regard to streets, though s. 63 of the P. H. A., 1936, *ante*, p. 218, now provides, in relation to "building byelaws" as defined in that Act, a slightly simpler mode of securing the same result.

(b) See, generally, on the question of construction of new streets, notes, *ante*, pp. 1953-7, and pp. 4336 *et seq.*, *post*.

An owner of land gave notice to the authority of his intention to lay out certain new streets, including a certain back street, and deposited plans of such streets. Notice was also given by a builder of his intention to dig and lay out the foundations of four cottages in the back street, and a plan of such street was deposited by him. In the plans deposited by the owner and builder, the back street, in which it was intended to build the cottages, was shown to be only twelve feet wide, whereas the minimum width required by the byelaws was eighteen feet. The authority gave to both the owner and the builder notice of their disapproval of such plans and, on the builder's proceeding to build the cottages according to the disapproved plans, they summoned him for laying out a new street of insufficient width, contrary to the byelaws. It was held that such summons was rightly dismissed, as the owner, and not the builder, was the person who had laid out the street (*Sunderland (Mayor of) v. Brown* (1880), 44 J. P. 831; 26 Digest 556, 2516). *Per* HAWKINS, J.: "All that the builder was employed to do was to build certain cottages upon the line of a street already laid out." See also *Att.-Gen. v. Gibb*, p. 235, *ante*; *Brown v. Edmonton L. B.*, p. 234, *ante*, and cases cited therewith; and *Welsh v. West Ham Corporation* (as to continuing offences), p. 235, *ante*, and cases cited therewith; *cf.* also *Att.-Gen. v. Ashbourne Recreation Ground Co.*, [1903] 1 Ch. 101; 67 J. P. 73; 26 Digest 558, 2534.

In certain cases local authorities who have adopted s. 31, P. H. A., 1925, Vol. V., *post*, can require a "new street" to be laid out of more than the width prescribed by the byelaws.

An authority made the following byelaw: "Every person who constructs a new street shall cause the kerb of each footpath in such street to be put in at such level as may be fixed or approved by the urban sanitary authority. No person shall commence the erection of a new building in a new street unless and until the kerb of each footpath therein shall have been put in pursuant to the preceding requirement. Every person offending against this byelaw shall be liable for each offence to a penalty of forty shillings." It was held that this byelaw was void as being unreasonable (*Rudland v. Sunderland Corporation* (1884), 49 J. P. 359; 52 L. T. 617; 26 Digest 554, 2494). "If it applied only to the particular piece of the street opposite to that on which a man might be going to build, there might be some ground for arguing that it was reasonable; but it is not so, for if it means anything it means that each owner must wait until the whole kerb is put in": *per* GROVE, J. "I doubt whether the authority has power to make these provisions with respect to matters which have been specifically provided for by s. 150, *ante*, p. 4388, since they amount to imposing on landowners an absolute duty to do certain things under pain of incurring a penalty, while that section merely provides that if they decline to do them there shall be no penalty, but the authority shall themselves do them and recover the expenses": *per* HAWKINS, J. In connection with the latter *dictum*, reference may be made to *Leyton U. D. C. v. Chew*, [1907] 2 K. B. 283; 71 J. P. 355; 26 Digest 555, 2505. There, the authority had made a byelaw that in the case of certain classes of streets there should be constructed on each side of the street a proper channel of a given size "either of granite cubes laid on a bed of cement concrete at least six inches in thickness, or otherwise in a suitable manner and with suitable materials." It was held that such byelaw was not bad for being inconsistent with s. 150 of the P. H. A., 1875, *ante*, p. 4388, and ss. 6 and 7 of the Private Street Works Act, 1892, *post*, p. 4851.

In *Baker v. Portsmouth Corporation* (1878), 3 Ex. D. 157; 42 J. P. 278; 26 Digest 552, 2488, BRAMWELL, L.J., said that "the words of sub-s. (1) include the construction of the buildings, and the buildings themselves and front gardens, or whatever else is at the side of the roadway," and a byelaw was held to be valid which provided that no building should be erected by the side of any new street, or to

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Byelaws as
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which any new street would form the only carriage approach, until such street had been constructed to the approval of the authority; but see *Rudland v. Sunderland Corporation*, *supra*, as to the particular requirement, and the *Barton Eccles Case*, *ante*, p. 1954. In the last-mentioned case the House of Lords held, reversing the decision of the Court of Appeal, that the word "width" in the section meant width of roadway, and not width between houses on each side of the street.

A local authority has no power to prescribe a building line by a byelaw under s. 157, but building lines may now be prescribed under s. 5, Roads Improvement Act, 1925, Vol. V., *post* (subject to the elaborate safeguards in the section) in highways repairable by the inhabitants at large, and where byelaws make the setting back of buildings a condition of concession in regard to the street itself (as is now usual, following the model byelaws) the condition will run with the land under sub-s. (2) of s. 140 of the Housing Act, 1936, *ante*, p. 1739.

Byelaws provided: ". . . (4) Every person who shall lay out a new street shall so lay out such street that the width thereof shall be forty feet at least . . . (6) Every person who shall construct a new street shall provide at one end, at least, of such street an entrance of a width equal to the width of such street, and open from the ground upwards"—*Held*, that the sixth byelaw was *intra vires* and reasonable, and that it prevented a landowner from constructing a new street upon his land until he had provided an entrance to the new street of the specified width, even though the entrance could only be made upon the land of another person over whom he had no control:—*Held*, also, that the "construction" of a new street included the building of the houses abutting on it, and, consequently, that the landowner could not, until an adequate entrance had been provided, erect houses abutting on the proposed new street (*Hendon L. B. v. Pounce* (1889), 42 Ch. D. 602; 26 Digest 554, 2498).

In *Bromley L. B. v. Lloyd* (1892), 56 J. P. 278; 66 L. T. 462; 26 Digest 554, 2500, a person desired to construct a new street upon his own land. The proposed entrance to it was a public lane of a width varying from twelve to twenty feet upon byelaws similar to those in the last case. *KEKEWICH, J.*, held that the person proposing to construct the new street was under an obligation, before constructing it, to provide an entrance of the width prescribed by the byelaws, and, further, that the fact that the entrance proposed was a public road did not alter such obligation if that road was of less than the prescribed width, and he therefore granted an *interim* injunction. But when the case was tried before *WILLS, J.*, he gave judgment for the defendant on the ground that the entrance required by the byelaw meant merely a practicable way into the street ((1893), 9 T. L. R. 306). Where byelaws required that the entrance to any new street should be thirty-six feet wide at the least, the local authority were held justified in refusing to pass plans for the construction of a new street showing an entrance of less than thirty-six feet wide, consisting of an existing street outside their district (*Barton Regis R. D. C. v. Stevens* (1896), 61 J. P. 598; 12 T. L. R. 347; 26 Digest 555, 2501). The L. G. B. since the 1912 issue of the model byelaws, and the M. of H. have, however, been unwilling to confirm byelaws requiring an "entrance," *eo nomine*, to a new street.

When a new street has once been constructed of the width required by the byelaws, it is not an offence thereunder to subsequently narrow it, *e.g.*, by the erection of gate piers therein; and, *semble*, a byelaw prohibiting any alteration of the original width would be *ultra vires* (*Tarrant v. Woking U. D. C.*, [1914] 3 K. B. 796; 79 J. P. 22; 26 Digest 555, 2503). See also *Urban Housing Co., Ltd. v. Oxford Corpn.*, [1940] Ch. 70, at p. 78; [1939] 4 All E. R. 211, at p. 216E; 104 J. P. 75, at p. 80; Digest Supp., where the Court of Appeal considered a modern byelaw as to the ends of streets, and *Cowan v. Hendon Borough Council*, [1939] 3 All E. R. 366; 103 J. P. 285; Digest Supp., as to the meaning of the word "street."

The byelaws of a local board required that every person laying out a new street should, if it were a principal street, lay it out at least thirty-six feet wide. In 1875 the board approved the plan of an estate showing a street as intended to be laid out thirty-six feet wide. In 1887 the relator built three houses in the street according to plans approved by the board; and in 1895 he sought an injunction to restrain the defendant Bell from building so as to cause the street to be of less width than thirty-six feet. *NORTH, J.*, refused an injunction because there was nothing to show that this was a "principal" street within the meaning of the byelaws (*Att.-Gen. v. Pudsey L. B. and Bell* (1895), 59 J. P. 329; 39 Sol. J. 315; 26 Digest 558, 2531).

In the town of Goole certain ways existed communicating with the backs of houses, and used by the authority (who did the scavenging of the town) for the purpose of obtaining access to privies and ashpits in order to remove the contents thereof. Plans were submitted for approval showing ways, such as above described, of the width of six feet; but the authority, who had made a byelaw prescribing ten feet as the minimum width of "new streets," refused to approve such plans. It was held, discharging a rule for a *mandamus* to compel approval, that the ways in question were "passages" within the meaning of s. 4, and, therefore, "streets" within the meaning of that section, and that, therefore, the authority had power by s. 157 (1) to make byelaws with respect to their width and construction, and the byelaw was valid (*R. v. Goole L. B.*, [1891] 2 Q. B. 212; 55 J. P. 535; 26 Digest 553, 2491).

The Manchester Improvement Act, 1845, s. 29, provided that no street should be made of less width than twenty-four feet; and s. 20 provided that it should not be lawful to build within the borough any houses with their fronts facing each other, which should be separated from each other by a space of less than twenty-four feet wide. It was held that these provisions prohibited the erection in a street of two houses at the same time, with their fronts facing each other, within the prescribed distance, but did not affect the erection of buildings not in a street (*R. v. Sidebotham* (1859), 23 J. P. 342; 28 L. J. M. C. 189).

The F. Improvement Act, 1855, incorporated the Towns Improvement Clauses Act, 1847. By s. 69 of the former Act, it was provided that no new street to be thereafter laid out should be of less width than forty feet, but by the general Act, which came into operation in cases which were not provided for by any special Act, the extreme width of new streets intended for the use of carriages was fixed at thirty feet. A street had some years previously to 1873 been laid out with a roadway of twenty-five feet, but the corporation had given notice that they should enforce the clause providing for a width of forty feet. They subsequently, upon the application of the defendant, waived that notice and approved a carriageway of twenty-five feet. It was held that s. 69 was imperative, and that the corporation could not permit a deviation from the Act. It was also held that, though the road had been laid out previously, the corporation were not bound to interfere until the building operations were actually commenced and the width of the road definitely fixed (*Att.-Gen. v. Folkestone (Corporation of)*, W. N. (1873), p. 127).

In 1830, A. projected the formation of a seaside town to be built on his land, and a plan was prepared showing the sites of various proposed roads, streets, and squares. In 1833 a private Act was passed, whereby the lands described on the plan were made a distinct parish for the purposes of the Act, and commissioners were appointed in whom were vested all roads, streets, and ways, then made and used by the public, or thereafter to be made and adopted by the commissioners under the Act. Before this Act passed, A. had sold to B. several of the plots described on the plan. Before and after the Act numerous houses had been built, and some of the streets shown on the plan had been wholly or partially formed and adopted by the commissioners; but no houses had been erected on the land sold to B., which was still used as agricultural land. In 1868 the commissioners gave to B.'s devisees notice of their intention to take possession of the sites of the proposed streets, etc. on the land sold to B., and in 1871 they proceeded to take such possession. It was held that they had no right to do so, there being no roads actually made for them to adopt, and the sites as such not vesting in them (*Mackett v. Herne Bay Commissioners* (1877), 37 L. T. 812; 26 Digest 282, 182).

S., having an old farmhouse with a shop front abutting on a lane, and other property near, gave notice to the authority of his intention to lay out a street, and submitted a plan, which was approved, showing the alteration and proposed width of the new street, which involved the setting back of the shop and garden. He did nothing to carry out the plan, and two months later put in a new shop front and rebuilt the garden wall on the old site. It was held that S. had done nothing contrary to the byelaw relating to the width of new streets, for he was entitled to abandon his plan notwithstanding the approval thereof (*Sunderland (Mayor, etc. of) v. Skinner* (1889), 53 J. P. 660; 26 Digest 556, 2509).

A line of railway situate in a deep cutting was crossed by a bridge carrying a road. A line of houses terminated at the eastern end of the bridge; across the bridge there was but one cottage, and the roadway ceased to be a public thorough-

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fare, being closed by a private gate. It was held that the road ceased to be a new street within the meaning of the Metropolis Management Amendment Act, 1862 (11 Halsbury's Statutes 965), at the eastern extremity of the bridge (*L. B. & S. C. Rail. Co. v. St. Giles, Camberwell (Vestry of)* (1879), 4 Ex. D. 239; 26 Digest 494, 2031).

A street which leads out of and afterwards back into a public carriageway "communicates at both ends with a public carriageway" (*London C. C. v. Edmundson* (1892), 56 J. P. 343; 66 L. T. 200; 26 Digest 512, 2167). Whether a street affords "direct communication between" two streets within s. 9 (4) of the London Building Act, 1894 (11 Halsbury's Statutes 1123), is a question of fact (*Woodham v. London C. C.*, [1898] 1 Q. B. 863; 62 J. P. 342; 26 Digest 512, 2168).

A street sixty feet wide, out of the further end of which leads a lane twenty feet wide, cannot be said to "terminate in a *cul-de-sac*" (*Stevenson v. Lee*, [1910] S. C. 14).

Where s. 17 of the P. H. A., 1907, *post*, p. 5043, has been applied to any district the authority may vary the position or direction and fix the beginning and end of new streets for the purposes and subject to the conditions in the section which (especially sub-s. (4)) should be carefully considered.

S. was convicted for non-compliance with a notice specifying certain irregularities in respect of the "laying out or construction" of a new street. The conviction was quashed on the ground that it was either void for uncertainty or bad as being for two offences (*R. v. Slater* (1903), 67 J. P. 299; 26 Digest 559, 2537).

See also *Woodhill v. Sunderland (Mayor, etc., of)* (1887), 52 J. P. 5; 57 L. T. 303; 26 Digest 554, 2495, decided upon the special provision of a local Act.

Byelaws
as to
sewerage.

(c) The model byelaws contain no clauses requiring the provision of sewers for the drainage of houses in new streets. "The reason for this is that the conditions which such byelaws must satisfy are, to so great an extent, dependent upon the varying circumstances of different localities" (L. G. B. Circular). The Board did not consider the matter to be one in regard to which byelaws could usefully be made. "It may be doubted," they said, "whether any powers which, under such byelaws, may be lawfully assumed by sanitary authorities, will, as regards extent and efficacy, compare with the powers which they derive from the express provisions of the Public Health Act." Of course under s. 150 of this Act, or under the Private Street Works Act where that Act has been adopted, an urban council can require owners to defray the cost of sewers before a street is taken over as a highway repairable by the inhabitants at large. The position of a rural council in this matter will be seen from the notes to the Private Street Works Act, 1892, *post*, p. 4848.

The Board and the M. of H. have not objected, however, to a byelaw which requires a person voluntarily providing such a sewer to construct it in a satisfactory manner, and the model byelaws require a person constructing a new street (not the same as "laying out" a new street: see p. 4435, *ante*) to provide for the carrying off of surface water. The latter byelaw is regarded by the M. of H. as being "with respect to the construction of new streets," and is therefore confirmed for county councils, if they desire to include it in a series of byelaws made under s. 30 (4) of the L. G. Act, 1929, Vol. V., *post*, which subsection does not extend to those provisions of the present section which relate to sewerage of new streets.

In the absence of any provisions in byelaws on the subject of sewerage, the authority cannot refuse to approve plans of new streets not showing any system of sewerage, but being in all respects in accordance with the byelaws (*R. v. Tynemouth R. D. C.*, [1896] 2 Q. B. 451; 60 J. P. 804; 26 Digest 554, 2497).

Ditches, etc.,
on building
estates.

A council were empowered to require the owner of land laid out for building on which any watercourse or ditch was situate, or which abutted on any watercourse or ditch, to execute such works as were in their opinion necessary to wholly or partially fill up or cover over such watercourse or ditch before proceeding to build. R. agreed to purchase some land abutting on a watercourse, and submitted plans for a factory which were approved subject to his culverting the watercourse. R. agreed to sell to O. a strip of land abutting on the watercourse, and conveyed it to O. on the same day as the land was conveyed to himself. The council, after the date of the conveyance, gave R. and O. notice to culvert the watercourse, but both ignored the notice and R. erected the factory. The council claimed against both a declaration that they were not entitled to commence, proceed with or maintain the factory without doing the works required by the council, and an injunction:—*Held*, that R.'s land did not abut on the watercourse, and that O., whose land did abut on it, did not intend to build, and that the action failed (*Att.-Gen. v. Rowley Bros.* (1910), 75 J. P. 81; 9 L. G. R. 121; 44 Digest 11, 39).

(d) Certain words here were repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (1), *ante*, pp. 720, 728. Byelaws as to buildings and sanitation are now dealt with by s. 61 of that Act, Vol. I., p. 190. Section 156 of the Act of 1875 being already repealed (*ante*, p. 156) this paragraph now relates to s. 155 alone.

(e) It was held under the L. G. A., 1858, s. 34, that a local board could not make a byelaw that before beginning to dig or lay the foundation of any new building, a written notice of one month at the least should be left with the clerk at one of the monthly meetings of the board, accompanied with the plans and sections. It was also held that if a person gave notice of intention to build, and left plans and sections, he might at once commence the building, subject to the right of the board to pull down or alter it, if not in conformity with the byelaws (*Hattersley v. Burr* (1866), 30 J. P. 407; 38 Digest 193, 307). This case and the previous one of *Young v. Edwards*, *ante*, p. 211, were discussed in *Hall v. Nixon* (1875), L. R. 10 Q. B. 152; 39 J. P. 341; 38 Digest 196, 320. There a byelaw was held good which required every person intending to erect a new building to give fourteen days' notice, and to deliver plans and sections to the surveyor of the board, and provided that any person erecting a new building without delivering such notice and plans, or without having the plans approved by the board, should be liable to a penalty. *Hattersley v. Burr* was distinguished on the ground that, under the byelaw in that case, a builder might be delayed two months. The provision for giving notice is not inconsistent with the power to pull down work executed in contravention of the byelaws under a byelaw or under the next section, for the beginning without notice may subject the builder to a penalty, while the work itself may be pulled down (*per* QUAIN, J., in *Hall v. Nixon*, *supra*, and see the next section).

It has been held that penalties for building in contravention of a byelaw, without the approval of the authority, cannot be recovered unless the authority have exercised their power of disapproval within the month prescribed by the next section (*Clark v. Bloomfield* (1885), 1 T. L. R. 323; 38 Digest 192, 301; but see the cases collected with this case in note (d) under P. H. A., 1936, s. 64 (1), *ante*, p. 221). With reference to the time within which proceedings under the byelaw must be taken, see the cases cited in the notes to the next section as to continuing offences, *post*, p. 4443.

A byelaw providing that every person who should intend to erect a building or to rebuild any existing house should give notice in writing of his intention to the authority and should accompany such notice with a plan, was held good (*Ballymena (Commissioners of) v. McKay* (1886), 17 L. R. Ir. 605).

(f) A byelaw requiring plans of new buildings showing the position of such buildings and of adjoining building was held good in *Slee v. Bradford (Mayor of)*, *ante*, p. 4431. Byelaws made under this section may require plans of a similar kind. It was held in *Gooding v. Ealing L. B.* (1884), 1 T. L. R. 62; 38 Digest 193, 304, that a local authority, having supplied a builder with a form of notice (which he had used) on the back of which was printed a so-called "regulation" (which he had seen) to the effect that plans would be retained, were entitled to retain the plans, even though disapproved. On the difficulties to which this case gives rise, see leading article in the Justice of the Peace Newspaper for December 4th, 1926, at p. 691. See now the P. H. A., 1907, s. 16, *post*, p. 5043, which refers, however, only to approved plans.

When an owner is allowed to deposit a specimen plan and afterwards proceeds to erect houses of the type shown therein, the specimen plan may be regarded as a plan applicable to each house (*Balby-with-Hexthorpe U. D. C. v. Millard* (1903), 68 J. P. 81; 21 Digest 229, 612).

A builder who executes work substantially departing from his approved plans may be convicted for executing it without having previously deposited plans (*Burton v. Acton*, *James v. Masters*, *ante*, p. 212). The owner of a building estate had deposited a specimen plan, in accordance with the byelaws, of certain types of houses intended to be erected. He deviated from such plan in regard to one of the houses in four respects, and was summoned; but the justices dismissed the summons on the ground that the deviations were not substantial. Subsequently he was summoned for deviation from the deposited plan in regard to two other houses in the same row, on the ground (as found by the justices) of similar deviations. The summons was dismissed on the ground that the matter was *res judicata*. It was held that the justices were bound to hear the summons on its merits, and that the matter was not *res judicata* (*Balby-with-Hexthorpe U. D. C. v. Millard*, *supra*).

**Note to
Section 157.**

Notices
before
building.

Deposit of
plans.

**Note to
Section 157.**

An urban authority had, in 1877, made byelaws, and in 1892 M., an intending builder, submitted plans which were approved thereunder. In 1893 the byelaws were superseded by new ones, which contained a proviso saving the validity of anything duly done or suffered under the old byelaws. In 1896 M. intimated to the authority that he intended to build in accordance with the plans approved under the old byelaws. In an action to restrain him in the County Palatine Court, *HALL, V.-C.*, held that he was entitled to proceed according to the plans approved under the old byelaws (*Withington U. D. C. v. Moore* (1896), 60 J. P. 408; 38 Digest 191, 290). See now s. 15 of the P. H. A., 1907, *post*, p. 5042, requiring (where it is in force) re-deposit of plans not carried out within three years of their deposit, if the local authority, after the expiry of that period, declare the deposit to be of no effect. On the application of a similar provision, in a local Act, where one plan covered several buildings which were begun at different dates, see *Harrogate Corporation v. Dickinson*, [1904] 1 K. B. 468; 68 J. P. 202; 38 Digest 193, 305.

In the year 1897, a "street" plan, showing a street to be called Colchester Terrace was deposited by a landowner, and approved by the authority, and the plan was re-deposited and re-approved in January, 1902. In 1900 a plan for thirty-one houses, part of Colchester Terrace shown in the first plan, was deposited and approved. On April 19th, 1902, notice was given on behalf of the appellant, a builder, of his intention to build twenty houses in Colchester Terrace. On June 6th, 1902, new byelaws with respect to buildings were confirmed, and they imposed fresh conditions as to thickness of walls, etc., but it was therein provided: "From and after the date of the confirmation of these byelaws, the following byelaws and parts of byelaws relating to new streets and buildings, shall be repealed, except as regards any work commenced before the date of the confirmation of this byelaw." On the date of such confirmation, some of the thirty-one houses set out in the plan approved in 1900 had not been commenced; and on August 6th, 1902, the appellant commenced, on some of the vacant sites, work which was in accordance with the old, but not with the new, byelaws. It was held that the plan approved in 1900 was not one plan for the whole of the buildings shown thereon, but in effect a number of separate plans for separate buildings; that if the work on any particular building was not commenced before June 6th, 1902, such approval did not authorise its erection in contravention of the new byelaws; and that it was a question of fact whether in any particular case work on a building had been commenced (*White v. Mayor of Sunderland* (1903), 88 L. T. 592; 67 J. P. 199; 38 Digest 191, 291).

A local Act provided that an undertaking in writing given by an owner of property on the passing of plans should be binding on his successors; but intending purchasers were entitled upon inquiry of the authority to information as to unfulfilled undertakings. It was held that having regard to the terms of the section, a purchaser could not dispute the validity of such an undertaking (to give up land for street widening) on the ground of "remoteness"; and that, his inquiries having been restricted to the existence of paving charges, and having been truthfully answered, the authority were not estopped from enforcing the undertaking (*Crane v. Wallasey U. D. C.* (1912), 76 J. P. 326; 107 L. T. 150; 38 Digest 190, 289). Apart from such a provision, a restrictive covenant entered into by an owner with an authority who own no land adjoining, or affected by the covenant, cannot be made to bind his successors (*London C. C. v. Allen*, [1914] 3 K. B. 642; 78 J. P. 449; 40 Digest 302, 2602, followed in *Chambers v. Randall*, [1923] 1 Ch. 149; 128 L. T. 507; 40 Digest 303, 2605, and in *Re Union of London and Smith's Bank, Ltd.'s Conveyance, Miles v. Easter*, [1933] Ch. 611; 149 L. T. 82; Digest Supp.; and *cf. Millbourn v. Lyons*, [1914] 2 Ch. 231; 111 L. T. 388; 40 Digest 324, 2741).

Where, however, a local authority approve plans of a new street subject to conditions imposed or authorised by the byelaws, such conditions may at any time be enforced by the authority against the owner for the time being of the land to which the conditions relate (s. 140 (2), Housing Act, 1936, *ante*, p. 1739).

The deposit and approval of plans does not bind the owner to build or lay out or dedicate the proposed building or street: see *Mackett v. Herne Bay Commissioners*, and *Sunderland Corporation v. Skinner*, on p. 4437, *ante*; *Hall v. Boole Corporation*; *Healey v. Batley Corporation*, and *Kirby v. Paignton U. D. C.*, on pp. 4392, 4393, *ante*.

The following cases turned upon special and peculiar provisions in local Acts as to the deposit and approval of plans and are therefore omitted in this edition:

Pearson v. Kingston-upon-Hull L. B. (1865), 29 J. P. 695, 711; 35 L. J. M. C. 36; *Cook v. Hainsworth*, [1896] 2 Q. B. 85; 60 J. P. 439; 38 Digest 196, 319. **Note to Section 157.**

(g) See the next section and the provisions as to expenses contained therein.

(h) Most of the case law on this power is on the question of the power to pull down buildings (not now incorporated in this section). This power was not confined to byelaws relating to structure, but might be extended to and incorporated in byelaws as to the giving of notices and the deposit of plans (see s. 158, *post*, p. 4442, and *cf. Baker v. Portsmouth (Mayor of)* (1878), 3 Ex. D. 4, 157; 42 J. P. 278; 26 Digest 552, 2488, decided under the earlier Acts). The model byelaws issued from the M. of H. are, however, so framed as to apply the power to breaches of the substantive byelaws only, it having been stated that the Minister doubts whether the extreme penalty of removing work was really intended by Parliament to apply where the work is itself in accordance with the law, a view to which effect has now been given in relation to building byelaws in s. 65, P. H. A., 1936, *ante*, p. 230. For failure to submit plans a pecuniary penalty is considered appropriate. Where a byelaw provides for the removal of work done in contravention of the byelaws, the authority may cause work so executed to be removed, although no plans of it have been deposited, and the authority have consequently not disapproved plans, the power being thus wider under byelaws than under s. 158 of the Act itself (*Fairbrass v. Canterbury Corporation* (1902), 67 J. P. 181; 1 L. G. R. 181; Digest Supp.), and in this respect also in conformity with the corresponding power relating to buildings. The right to exercise such power does not fall within the Summary Jurisdiction Acts, and therefore does not cease on the expiration of six months from the completion of the work (*ibid.*) but the model byelaws provide for its being exercised within twelve months, the same period as is fixed in relation to buildings by s. 65 of the P. H. A., 1936, *ante*, p. 230, except that in that section the period of twelve months is that in which notice to remove may be served and not that in which the actual removal must be done. The period (twice that fixed by the S. J. Acts) is as long as a builder ought to be kept liable to be called on to remove his work without a judicial decision (that is to say, without moving the Attorney-General to apply to the High Court for an injunction that the work be removed: a remedy which is open at any time. See *Att.-Gen. v. Ashbourne Recreation Ground Co.* and other cases cited therewith, *infra*).

A byelaw required every person erecting a new building to cause it to be constructed in the manner therein specified. By another byelaw the council were empowered to remove, alter or pull down "work" done in contravention of (*inter alia*) the first-mentioned byelaw. A man did work on an old railway carriage placed in a field, converting it into a dwelling-house, but leaving untouched the main portion of the shell. It was held that by virtue of s. 159 (now repealed) he had erected a new building; and that, as the whole building was erected in breach of the first byelaw, the council were entitled under the second byelaw to pull down not only the work done in converting the carriage into a dwelling-house, but the whole carriage (*Hanrahan v. Leigh-on-Sea U. D. C.*, cited under other cases on p. 288, *ante*). *Cf. Andrews v. Wirral R. D. C.*, [1916] 1 K. B. 863; 80 J. P. 257; 38 Digest 183, 233; *Rodwell v. Wade* (1924), 23 L. G. R. 174; 38 Digest 187, 260; and *Keeling v. Wirral R. D. C.* (1925), 23 L. G. R. 201; 38 Digest 188, 261.

A byelaw made by an urban authority provided that every new street should be laid out and formed of the width required by the byelaw:—*Held*, that *width* in the text and in the byelaw meant width of roadway and not width between houses on each side of the street; and that the authority were not entitled under the above byelaw, or any other of their existing byelaws, to disapprove of and pull down houses in the course of erection in a new street on the ground that the building line was too near the roadway (*Robinson v. Barton-Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276; 26 Digest 269, 86).

When the byelaws are contravened, the remedies contained in them are not the only remedies available. The court can enforce compliance with them by an injunction in an action by the Attorney-General (*Att.-Gen. v. Ashbourne Recreation Ground Co.*, [1903] 1 Ch. 101; 67 J. P. 73; 26 Digest 558, 2534; *Devonport Corporation v. Tozer*, [1903] 1 Ch. 759; 67 J. P. 269; 26 Digest 558, 2523; *Att.-Gen. v. Dorin*, [1912] 1 Ch. 369; 76 J. P. 181; 26 Digest 556, 2517; *Att.-Gen. v. Kerr and Ball* (1915), 79 J. P. 51; 12 L. G. R. 1277; 38 Digest 167, 124), and this jurisdiction exists, in the case of a continuing offence, although an offender against the byelaws

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has been previously convicted and fined (*Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34; 68 J. P. 341; 28 Digest 368, 42). The cases just referred to establish, however, that such proceedings are not open to the local authority in the absence of the Attorney-General, and the earlier cases where such proceedings were so brought, but in which the right of the plaintiffs to sue alone was not questioned, can, probably, be no longer relied upon. See *e.g.*, *Hendon L. B. v. Pounce*, and *Bromley L. B. v. Lloyd*, cited at p. 4436, *ante*.

(i) On these words, see notes, *ante*, p. 679.

As to commencement of works and removal of works made contrary to byelaws.

158. Where a notice, plan, or description of any work is required by any byelaw made by an urban authority (a) to be laid before that authority, the urban authority shall, within one month (b) after the same has been delivered or sent to their surveyor or clerk, signify in writing (c) their approval or disapproval (d) of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any byelaw of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed (e).

Where an urban authority incur expenses in or about the removal of any work executed contrary to any byelaw, such authority may recover in a summary manner (f) the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed, at their discretion (g).

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any byelaw, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any byelaw to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the byelaw shall be deemed to be a continuing offence (h), but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the byelaw was broken.

This section was repealed by the P. H. A., 1936, s. 346 (1) and Sched. III., Pt. I (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed therewith. To the extent that it still operates, the section is in force in every urban district, and in the district of every rural authority by virtue of the Rural District Councils (Urban Powers) Order, 1931 (S. R. & O. 1931, No. 580). Where, however, a county council make byelaws under the preceding section, upon default by a rural district council (s. 30 (4), L. G. A., 1929, Vol. V., *post*) they have not the powers of this section, although they may, in virtue of the preceding section, include in the byelaws provisions as to the removal, alteration, or pulling down of work begun or done in contravention of the byelaws.

When work must be begun.

The L. G. B. stated that they did not consider that an urban council could make a byelaw under the P. H. A., 1875, to the effect that their approval of plans of new streets or buildings shall be inoperative unless the works approved of shall be commenced within a stated period. See now, however, s. 15 of the P. H. A., 1907, *post*, p. 5042, upon this point, and reference to the section in note (f) on s. 157, *ante*, p. 4440.

Fee for examining plans.

The L. G. B. expressed the opinion that there is no authority for a byelaw under the P. H. A., 1875, requiring fees for the examination of deposited plans, etc. and that no such fees can be legally charged under the general law.

(a) These words are general, and are not limited to byelaws made under this Act,

but see the opening sentence of the foregoing general note, as to the partial repeal of the section. Note to Section 158.

(b) This means a calendar month (Interpretation Act, 1889, s. 3 (18 Halsbury's Statutes 993)). The time cannot be extended by the byelaws (*Clark v. Bloomfield* (1885), 1 T. L. R. 323). It has been stated that the Minister of Health attaches primary importance to this requirement (considering indeed that the statutory period is too long to keep a builder waiting in practice) and that local authorities should so frame their standing orders and arrange their procedure that (at any rate) they can keep within the statutory period.

(c) As to authentication of notice of approval or disapproval, see s. 266, *post*, p. 4494. Removal

(d) For powers of the authority and remedies of builders if plans are disapproved, of work. *cf.* notes to s. 64 of the P. H. A., 1936, *ante*, p. 221.

(e) There may be a provision to this effect in the byelaws: see s. 157, *ante*, p. 4432; and *cf.* *Robinson v. Barton-Eccles L. B.*, on p. 1954, *ante*. Notwithstanding the power given by this section, the authority may proceed for a penalty for breach of any byelaw; see *Hall v. Nixon, ante*, p. 4439, and see *Andrews v. Wirral R. D. C., ante*, p. 235.

As to other remedies for infraction of byelaws, see note (h) under s. 157, *ante*, p. 4441.

Notice must be given to the person executing the work, and an opportunity afforded to him of being heard before the authority can legally demolish the same (see *ante*, p. 235, and *Urban Housing Co. v. Oxford Corporation*, [1940] Ch. 70; [1939] 4 All E. R. 211; 104 J. P. 15; Digest Supp.).

(f) See s. 251, *post*, p. 4481. This provision was before 1875 contained in many byelaws, but it does not appear that such a byelaw was legal. Hence the provisions in the text.

As to the time within which these expenses may be recovered, see the note to P. H. A., 1936, s. 296, *ante*, p. 615.

In *R. v. Morris* (1883), 31 W. R. 609; 16 Digest 477, 3583, it was held that on a *certiorari* to quash an order of justices for payment of expenses under this section costs might be granted, as the proceedings were civil, not criminal. This case was not followed in *R. v. Parby* (2) (1889), 53 J. P. 774; 16 Digest 477, 3584, but it has now been decided by the Court of Appeal that the King's Bench Division and Court of Appeal have power to award costs to a successful applicant for a writ of *certiorari* (*R. v. Woodhouse*, [1906] 2 K. B. 501; 70 J. P. 485). The decision on the main point in this case was afterwards reversed (*sub nom. Leeds Corporation v. Ryder*, [1907] A. C. 420; 71 J. P. 484; 16 Digest 398, 2421), but the decision as to the power to award costs on *certiorari* was not discussed.

(g) *Cf.* note (d) to s. 65 of the P. H. A., 1936, *ante*, p. 234.

(h) These words provide a means of meeting the decision in *Marshall v. Smith* Person (1873), L. R. 8 C. P. 416; 37 J. P. 471; 33 Digest 419, 1304. In that case byelaws causing were made under the P. H. A., 1848, s. 115, and the L. G. A., 1858, s. 34, by one of work to be which (No. 12) all party-walls, except in houses of one storey, were required, under executed. a penalty of 40s., to be nine inches at least in thickness, whilst another (No. 42) Continuing provided that "in case any offence under any of the foregoing byelaws shall continue, offences. the person offending shall be liable to a further penalty of not exceeding 40s. for each day during which such offence may continue after written notice of the offence has been given by the local board to the offender." The appellant having been fined for an offence against byelaw No. 12, in building a party-wall four and a half inches thick, was afterwards convicted upon an information charging him, under byelaw No. 42, with continuing the offence. It was held that suffering the party-wall to remain unaltered was not a continuing offence within byelaw No. 42, or, if it was, that the byelaw was unreasonable, the appropriate remedy being the removal of the structure by the board, as authorised by the L. G. A., 1858, s. 34. The court pointed out that while continuing to build might be a continuing offence, the failure to destroy after the building was completed could not.

Cf. also notes on pp. 231 *et seq.*, *ante*.

* * * * *

160. The provisions of the Towns Improvement Clauses Act, 1847, Incorporation with respect to the following matters, that is to say, of certain provisions of

(1) With respect to naming the streets and numbering the houses; 10 & 11 Vict. c. 34.

and

- Section 160. (2) With respect to improving the line of the streets and removing obstructions ; and
 (3) *With respect to ruinous or dangerous buildings (a) ; and*
 (4) With respect to precautions during the construction and repair of the sewers streets and houses,

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act (b).

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on owners (c) instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers ; and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act (d).

This section is applied by the Act to urban districts only, but the several powers may be applied to rural districts by order of the M. of H. under s. 276, *post*, p. 4502, and this has been done, in so far as the section incorporates the provisions of ss. 69, 70 of the Act of 1847, by the Rural District Councils (Urban Powers) Order, 1931 (S. R. & O., 1931, No. 580). An application for a further order should set out the precise powers desired, the names of the rural parishes in which such powers are considered to be necessary, and (shortly) the grounds upon which the application is made.

Forms for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XII., at pp. 590—599.

Further powers with regard to the naming of streets are given by ss. 17—19 of the Public Health Act, 1925, Vol. V., *post*. Where s. 19 of that Act has been adopted, the words “naming the streets and” in this section will cease to have effect in respect of that district (sub-s. (3), *ibid.*).

(a) The words in italics were repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (1), *ante*, pp. 720, 728, except in so far as the enactments thereby incorporated (ss. 75—78 of the Act of 1847, *ante*, pp. 4207—4209) relate to buildings, walls or other things which are dangerous to passengers. As to the latter, see notes at p. 295, *ante*.

(b) No. (1) includes ss. 64, 65 ; No. (2), ss. 66—74 ; No. (3), ss. 75—78 ; No. (4), ss. 79—83. All these sections with notes thereto are set out *ante*, pp. 4202 *et seq.* As to the effect of such an incorporation of a statute, see the cases cited in note (cc) to s. 120 of the P. H. A., 1936, *ante*, p. 370.

With regard to some of these subjects, special provisions will be found in the Act (compare, *e.g.*, s. 154 with s. 67 of the Act of 1847), and it will be important to ascertain whether these provisions in any respect conflict with those in the incorporated Act. Where that may be the case, the present statute should afford the rule to guide, as containing the latest legislation on the particular subject. See as to s. 64 of the Act of 1847, the P. H. A., 1907, s. 21, *post*, p. 5048 ; as to s. 69 of the Act of 1847, P. H. A., 1925, s. 24, Vol. V., *post*, ; as to s. 80, the P. H. A., 1890, s. 34, *post*, p. 4811, and the P. H. A., 1907, s. 32, *post*, p. 5052 ; as to s. 74, the P. H. A., 1925, s. 21, Vol. V., *post* ; as to s. 81, the P. H. A., 1907, s. 29, *post*, p. 5049 ; and as to the fencing of dangerous places in streets, see the P. H. A., 1907, ss. 30, 31, *post*, pp. 5050—52.

(c) See the definition in s. 4, *ante*, p. 4335. And as to the authentication and service of notices, see ss. 266, 267, *post*, pp. 4494—5.

(d) See s. 213, *post*, p. 4468. As to the effect of special covenants and agreements between lessor and lessee, see s. 226, *post*, p. 4474, but that section does not apply to the case mentioned in the text.

Lighting Streets, etc.

Section 161.

161. Any urban authority may contract (a) with any person (b) for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district (c), and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for lighting the same (d).

Powers
of urban
authority for
lighting their
district.
12 & 13 Vict.
c. 94, s. 8.

Where there is not any company or person (b) (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament (e), to supply gas for public and private purposes, supplying gas (f) within any part of the district of such authority, such authority may (g) themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order (h) authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Waterworks Facilities Act, 1870 (i), and any Act amending the same; and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

This section applies to urban authorities only, but the M. of H. and his predecessors the L. G. B. have issued many orders under s. 276, *post*, p. 4502, empowering rural authorities to undertake (by contracting for) the lighting of streets and public places in rural parishes (not of course private houses). These powers were not affected by the transfer from rural councils to county councils of the functions of highway authority in rural districts by the L. G. A., 1929 (see s. 11 (11), L. G. A., 1888, as amended, *post*, p. 4732), but the position is now considerably affected by s. 23 of the Road Traffic Act, 1934 (see notes, *infra*). An application for an order should be by resolution of the council, of which a copy should be forwarded to the Ministry with a short statement of the grounds upon which the application is made, and explaining the arrangements which are proposed for lighting the particular parish or parishes referred to. The lighting need not necessarily be by gas, but if electric lighting is proposed the council should consult the Electricity Commissioners as an order may be procurable under the Electricity (Supply) Act, 1919, *post*, p. 5245, which will dispense with any Order of the M. of H.

As under the Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186), action may also be taken parochially for the lighting of rural parishes, the clerk should state in connection with any application for urban powers whether the lighting provisions of that Act are in force in the area in which the rural council propose to act. In this case the application must extend to s. 163, and it must be explained why it is proposed to supersede the existing lighting authority (Parish Council or Inspectors), and what is their attitude towards the proposal. See below as to the provision made in such orders for expenses.

By s. 23 of the Road Traffic Act, 1934 (27 Halsbury's Statutes 552), notwithstanding the powers conferred upon the councils of non-county boroughs and urban county and rural districts by or in pursuance of ss. 161 and 276 of this Act, or otherwise, and upon parish meetings and parish councils in rural parishes who have, in pursuance of s. 7 of the L. G. A., 1894, *post*, p. 4895, adopted the provisions of the Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186), the council of a county may,

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councils.

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if they consider that any county road or part thereof should be illuminated or better illuminated, enter into and carry into effect an agreement for the supply for that purpose of gas, electricity, or other means of illumination, with the road lighting authority, or with any other authority or person having power in that behalf, and may provide such lamps, lamp posts, and other materials and apparatus as they may think necessary for the purposes of this section: Provided that nothing in the section is to be deemed to be in derogation of the powers conferred as aforesaid upon the councils of non-county boroughs and urban and rural districts or upon parish meetings or councils. Provision is made as to notice and as to payment of expenses.

Rural
parishes.

Orders of the M. of H. authorising the lighting of rural parishes by the district council confer only the powers of the first paragraph of s. 161, relating to contracts for the supply of gas or other illuminant for lighting streets, etc. The L. G. B. held that there were practical difficulties which precluded rural councils from carrying on a gas undertaking even if they were invested with power to establish or purchase one. They said that the difficulty arose not in conferring powers under ss. 161 and 162, but from the fact that, in addition to such powers, an urban authority, in ordinary cases, required the powers of a Provisional Order under the Gas and Waterworks Facilities Acts, and in the case of a rural council there was no express statutory authority enabling them to apply for such an order. Now, under s. 10 of the Gas Regulation Act, 1920, Vol. V., *post*, the Board of Trade are enabled to grant by Special Order any powers which could previously have been obtained by Provisional Order under the G. & W. F. Acts, and as there is more than one recent instance in which a rural district council has succeeded in obtaining the requisite urban powers from the M. of H. to enable them to apply for a Special Order it would seem that the absolute disability referred to has disappeared, possibly, however, only as regards the acquisition and carrying on of existing gas undertakings in rural districts. The Board of Trade have also succeeded the M. of H. as the department to issue Provisional Orders to local authorities under the earlier Acts (see Order in Council of November 9th, 1920), but such orders are never made now. Special Orders are a simpler and cheaper procedure. See also the Electricity (Supply) Acts, 1919, *post*, p. 5245, and 1926 (Vol. V. and 7 Halsbury's Statutes 792).

(a) See notes to L. G. A., 1933, s. 266 (2), *ante*, pp. 1125 *et seq.*, as to the regulations regarding the contracts. As to the meaning in a contract of the words "actual cost of generating the light," see *Bulawayo Municipality v. Bulawayo Waterworks Co. Ltd.*, [1908] A. C. 241; 20 Digest 208, 51.

Where a contract for street lighting contained no provision for its termination, it was held that the agreement was not a perpetual one but could be determined by either party on notice (*Crediton Gas Co. v. Crediton U. D. C.*, [1928] Ch. 447; 92 J. P. 76; Digest Supp.).

During the war of 1914-19 and because of the restrictions requiring reduced lighting of streets in compliance with orders under the Defence of the Realm Act, full performance of lighting contracts was rendered impossible. The legal position under such contracts was considered by the courts in the following cases: *Leiston Gas Co. v. Leiston-cum-Sizewell U. D. C.*, [1916] 2 K. B. 428; 80 J. P. 385; 25 Digest 478, 49; *Wycombe Borough Electric Light and Power Co. v. Chipping Wycombe Corporation* (1917), 33 T. L. R. 489; 15 L. G. R. 658; 12 Digest 403, 3252. For a case arising out of the war which began in 1939, see *Egham and Staines Electricity Co., Ltd. v. Egham U. D. C.*, [1942] 2 All E. R. 154; 58 T. L. R. 319.

(b) See the definition in s. 4, *ante*, p. 4334.

(c) It must be noticed that this power is limited to the district of the authority. A contract extending to any place outside the district would be *ultra vires*.

By the Metropolis Gas Act, 1860, s. 6 (8 Halsbury's Statutes 1242), a certain district was assigned to each metropolitan gas company, and it was provided that no other company or person should "supply gas for sale within the said limits." By s. 14 (*op. cit.* 1243), the supply of gas to owners or occupiers of premises within or partly within the company's district requiring such supply was made compulsory. A railway company had a station which was partly within the district of the appellants and partly within that of the respondents. The respondents, on being required to do so by the company, provided a meter at a point within their own district, from which they supplied gas which was used for lighting the whole station, including the part which was in the appellants' district, to which it was conducted through

Note to
Section 161.

pipes laid on the premises of the company. It was held that this was an infringement of s. 6 (*Gas Light and Coke Co. v. South Metropolitan Gas Co.* (1889), 54 J. P. 373; 62 L. T. 126; 25 Digest 491, 114). See also *Att.-Gen. v. West Gloucestershire Water Co.*, [1909] 2 Ch. 338; 73 J. P. 453; 28 Digest 460, 750, as to the point at which "a supply is given." Cf. the Gas Undertaking Act, 1929, s. 5; Vol. V. and 8 Halsbury's Statutes 1293.

It was held in *Fareham L. B. v. Smith* (1891), 90 L. T. Jo. 467; 7 T. L. R. 443; 26 Digest 393, 1196, that an urban authority might authorise their contractor to put up posts and wires in streets vested in them, for the purpose of lighting such streets by electricity, and might restrain by injunction the owners of adjoining land who claimed the subsoil of the street from cutting or otherwise interfering with the electric wires and poles.

The streets lighted need not necessarily be highways repairable by the inhabitants at large. See note to s. 150, *ante*, p. 4398.

The L. G. B., by an order under s. 276, *post*, p. 4502, declared that the provisions of the first paragraph of s. 161 should be in force within certain portions of a rural sanitary district, and invested the rural sanitary authority with all the powers, rights, capacities, etc. of an urban sanitary authority "under those provisions" within such portions of the district. The rural authority incurred lighting expenses under this order, and treated them as general expenses under s. 229 of this Act, now replaced by s. 190 of the L. G. A., 1933, *ante*, p. 1016. A poor rate having been made to defray the expenses, a railway company was assessed in respect of the full rateable value of the property which consisted of land occupied and used as a railway:—*Held*, that upon the true construction of the order the rural authority was invested only with the power of an urban authority to incur lighting expenses under the provisions of the first paragraph of s. 161, and not with the rating powers applicable to an urban authority; that the expenses were rightly treated as general and not as special expenses under s. 229; and that the company was not entitled to be rated under s. 211 (now replaced by s. 11 of the Act of 1936, *ante*, p. 15) in the proportion of one-fourth part only of the rateable value (*L. & Y. Rail. Co. v. Bolton Union* (1890), 15 App. Cas. 323; 54 J. P. 532; 33 Digest 101, 686).

It may be noted, however, that the order referred to was a very exceptional one as nearly all orders putting the first paragraph of the section in force in a rural parish contain a provision that the expenses of the rural council in executing the powers shall be chargeable as special expenses upon the parish. But see now the power of a rural district council to defray any special expenses wholly or partly as general expenses in s. 190 (4), L. G. A., 1933, *ante*, p. 1018.

(d) Where trustees of a public road were empowered to place lamps along the road, but failed to do so, it was held that they were not liable in an action to a person injured by reason of the road not being lighted (*Harris v. Baker* (1815), 4 M. & S. 27; 26 Digest 392, 1187). In a case where a brougham ran against a lamp post at a dangerous point, the court held that the failure to light the lamp was not negligence, there being no statutory obligation to do so (*Mellor v. Heywood (Mayor, etc. of)* (1884), 48 J. P. N. 148). *Harris v. Baker* was followed in *Cowley v. Neumarket L. B.*, *ante*, p. 4352. By the Metropolis Management Act, 1855, s. 130 (11 Halsbury's Statutes 917), the lighting authority have a discretion as to the time during which public street lamps shall continue lighted, and when they have *bonâ fide* exercised their discretion in that respect they are not liable on the ground of either nonfeasance or misfeasance for any accident, caused through the lights having been turned out at the hour ordered (*Young v. St. Mary, Islington (Vestry of)* (1896), 60 J. P. 821; 26 Digest 393, 1193). On the other hand, where the defendants, who were both the highway and the lighting authority, had erected a post in the centre of a footpath at its entrance to prevent cattle straying upon it, and had placed a lamp near the post, which they were in the habit of lighting at night, and the plaintiff, passing along the footpath at night, when the lamp was not lighted, came against the post and was injured, it was held that the defendants were liable (*Lamley v. East Retford (Mayor, etc. of)* (1891), 55 J. P. 133; 26 Digest 390, 1171); see also *Knight v. Sheffield Corpn.*, *post*, p. 4448. In a Scots case where the local authority were under a duty "to make provision for lighting the streets . . . in such manner as to them shall appear suitable and to provide erect and maintain such a number of lamps . . . as may be necessary for that purpose and to light such lamps," they were held not liable for an accident

Expenses
in case of a
rural council.

Liability for
negligence
in respect
of lighting.

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Section 161.**

due to a red lamp on a tramway island not being lit in the absence of negligence on the part of them or their servants (*Keogh v. Edinburgh Magistrates*, [1926] S. C. 814; [1926] S. L. T. 527; Digest Supp.). In *Sheppard v. Glossop Corporation*, [1921] 3 K. B. 132; 85 J. P. 205; 26 Digest 393, 1197, a lamp which had been placed on a retaining wall was extinguished every night. The plaintiff whilst the light was extinguished missed his way without negligence, strayed on to private land and fell over the retaining wall into the street and was injured. It was held in an action for negligence against the authority that s. 161 imposes no obligation on a local authority to light the streets in their district, that the defendants, although they had begun, were not bound to continue the lighting of the street and that not having done anything to make the street dangerous they were not bound to give warning of danger. See also *Martin v. Blackburn Corporation* (1907), 71 J. P. N. 124 (a county court case), *McClelland v. Manchester Corporation*, and *Oldham v. Sheffield Corporation*, on pp. 435-5, *ante*, where street lights were misleading; and see *Ryan v. Tipperary C. C.* and other cases on p. 435, 3 *ante*, as to the duty of a highway authority to provide for the safety of the public during any interference with a road.

See also the following cases during the war of 1914-19, of accidents where negligence was alleged arising out of the restrictions in public lighting imposed by order under the Defence of the Realm Acts, *Brown v. Lambeth Borough Council* (1915), 32 T. L. R. 61; 26 Digest 515, 2188; *Gt. Central Rail. Co. v. Hewlett*, [1916] 2 A. C. 511; 80 J. P. 361; 26 Digest 419, 1383; *Morrison v. Sheffield Corporation*, [1917] 2 K. B. 866; 81 J. P. 277; 26 Digest 445, 1623; *Baldock v. Westminster City Council* (1919), 83 J. P. 98; 17 L. G. R. 190; 26 Digest 515, 2189; *Carpenter v. Finsbury Borough Council*, [1920] 2 K. B. 195; 84 J. P. 107; 26 Digest 515, 2190. For similar cases arising out of the war which began in 1939, see *Greenwood v. Central Service Co., Ltd.*, [1940] 2 K. B. 447; [1940] 3 All E. R. 389; 104 J. P. 380; Digest Supp.; *Wodehouse v. Levy*, [1940] 2 K. B. 561; [1940] 4 All E. R. 14; 104 J. P. 403; Digest Supp.; *Lys v. Stepney B. C.*, [1940] 4 All E. R. 463; Digest Supp.; *Jelley v. Ilford B. C.*, [1941] 2 All E. R. 468; *Fox v. Newcastle-on-Tyne Corporation*, [1941] 2 K. B. 120; [1941] 2 All E. R. 563; 105 J. P. 404; *Knight v. Sheffield Corporation* (1942), 106 J. P. 197; *Foster v. Gillingham Corporation*, [1942] 1 All E. R. 304; 106 J. P. 131.

Discretion as
to site for
lamp posts.

The authority have a discretion where to erect lamp posts, and the proper exercise of their discretion will not be interfered with at the suit of adjoining owners even though they complain of such posts obstructing the access to their premises (*Chaplin v. Westminster Corporation*, [1901] 2 Ch. 329; 65 J. P. 661; 26 Digest 333, 649; and *cf. Goldberg & Sons, Ltd. v. Liverpool Corporation* (1900), 82 L. T. 362; 16 T. L. R. 320; 26 Digest 445, 1624; *Escott v. Newport Corporation*, [1904] 2 K. B. 369; 68 J. P. 135; 26 Digest 327, 597).

(e) See P. H. A., 1936, s. 142, note (c), *ante*, p. 404. There is no reference here to personal pecuniary profit.

Companies
without
statutory
powers.

It will be observed that the section gives no protection to gas companies who are not regulated by parliamentary powers. The L. G. B. once stated, however, that although there was no insuperable difficulty in the way of the issue of a Provisional Order enabling an urban council to set up and maintain gasworks in opposition to an existing company, and without purchasing their undertaking, the Board would not be disposed to issue a Provisional Order for that purpose unless some very exceptional reasons were shown for the application. As already pointed out the Board of Trade, not the M. of H., now exercise the powers formerly vested in the L. G. B. and the provisions of the Gas Regulation Act, 1920, must be considered, Vol. V., *post*.

Companies
not actually
supplying.

(f) It will be observed that the statutory company must be actually supplying gas within the district, as well as empowered by their Act or order to do so. In a case in which part of the district of an urban council applying for a Provisional Order was found to be within the gas limits of the council of a neighbouring borough, though gas had never been supplied within the area, the L. G. B. required the observations of the town council upon the subject of the application, and eventually inserted a provision in the order to the effect that the town council's powers should not be prejudiced or affected if at the expiration of five years from the passing of the confirming Act the urban council were not furnishing, or prepared on demand to furnish, a supply of gas in the area.

(g) This is only an enabling power. There is no obligation upon the urban authority to undertake these works, but they are not to set up gasworks to compete

with companies or other bodies under statutory powers. But though they may not themselves undertake a supply in opposition to a company, they may apparently contract with a person other than the company for the lighting of streets, etc., under the first paragraph of the section. As to an authority's liability for a nuisance caused by their gasworks, see *Wood v. Conway Corporation*, [1914] 2 Ch. 47; 78 J. P. 249; 36 Digest 224, 658. Note to Section 161

It would seem that an authority to whom the undertaking of a company supplying gas under statutory powers has been transferred is in the same position as the company for purposes of this section. See *Wolverhampton (Corporation of) v. Bilston (Commissioners of)*, [1891] 1 Ch. 315; 43 Digest 1059, 16.

(h) Now see the Gas Regulation Act, 1920, s. 10, Vol. V., *post*. It is not absolutely necessary for the urban authority to procure an order to enable them to set up gasworks, but they would have none of the powers which are given by the general gas statutes for carrying on such works unless they procured such an order. Whether, if they acquire the undertaking of a company established under a private Act, they can, without such order, avail themselves of all the powers of such Act, is open to doubt. See *Richmond Waterworks Co. v. Richmond Vestry*, *ante*, p. 365. See also notes to s. 162, *infra*. Gas Orders.

The Board of Trade have made rules dated March 1st, 1922, with respect to applications for special orders under s. 10 of the Gas Regulation Act, 1920, which practically supersede those contained in the general order of the L. G. B. dated September 7th, 1891, as to provisional orders under the Acts of 1870 and 1873. Regulations as to Orders.

A Special Order of the Board of Trade may authorise the urban council to supply gas beyond the limits of their district. See s. 10 (2) (e) of the Gas Regulation Act, 1920; Vol. V. and 8 Halsbury's Statutes 1288. Supply outside district.

As to the assessment to income tax of an authority supplying gas for public and private purposes, see *Dillon v. Haverfordwest (Corporation of)*, [1891] 1 Q. B. 575; 55 J. P. 392; 28 Digest 43, 219. Income tax.

(i) Gas and Water Works Facilities Act, 1870, *ante*, p. 4264, amended by Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, *ante*, p. 4328. The earlier Act incorporates the Gasworks Clauses Act, 1847, *ante*, p. 4163, which was amended by the Gasworks Clauses Act, 1871, *ante*, p. 4307. The Conspiracy and Protection of Property Act, 1875, s. 4, deals with breaches of contract by persons employed in supply of gas or water and is extended by s. 31, Electricity (Supply) Act, 1919, to the supply of electricity. See also s. 6 (4) of the Trade Disputes and Trade Unions Act, 1927; Vol. V. and 19 Halsbury's Statutes 749. See the above Acts, pp. 4543, 5263, and Vol. V., *post*.

162. For the purpose of supplying gas within their district or any part thereof either for public or private purposes any urban authority may (with the sanction of the Local Government Board) buy, and the directors of any gas company (a), in pursuance, in the case of a company registered under the Companies Act, 1862 (b), of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company (c), all the rights powers and privileges and all or any of the lands premises works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase. Power for sale of undertaking of gas company to urban authority.

The powers of the M. of H. (as successors to the L. G. B.) under this section were transferred to the Board of Trade by Order in Council dated November 9th, 1920.

See note to preceding section as to the position of rural councils. Rural districts.

Compulsory powers for the purchase of gas undertakings cannot be obtained otherwise than by special Act of Parliament. Purchase of gas undertakings.

(a) It has been observed that this section is confined to companies. As regards

Note to Section 162. private individuals who may be owners of such works, no provision seems to be requisite. But the section does not in terms apply to public commissioners or trustees holding gasworks. See, however, the extended powers conferred by ss. 1, 2, of the Gas Undertakings Act, 1932; Vol. V. and 25 Halsbury's Statutes 187, 188.

(b) See now the Companies Act, 1929, s. 117; Vol. V. and 2 Halsbury's Statutes 849.

(c) A gas company supplied gas in a district, a portion of which was not within their statutory limits of supply. By an agreement made between the gas company and the urban council of the district outside the limits of supply, it was agreed that the company should sell, and the council should purchase, all and singular the works, pipes, mains, meters, and other gas apparatus, and all other the real and personal property (if any) and all effects of the company of whatsoever kind laid down or situate within the district, freed and discharged (as between the company and the council) from all debts, outgoing, and liabilities and all easements, rights, powers, authorities and privileges (if any) enjoyed or exercisable by the company, at a price to be agreed upon, or, in default of agreement, to be determined by arbitration. The agreement further provided that in the case of arbitration, and in the event of the council not continuing to take a supply of gas in bulk from the company, the arbitrators should take into consideration, in fixing the purchase-money, the value of any mains or pipes laid down by the company outside the district of the council for the purpose of supplying gas within the district of the council, which, by reason of the sale, would be rendered useless to the company. By a second agreement, terminable upon twelve months' notice, it was agreed that the council should take a supply of gas in bulk from the company. It was held that the purchase-money was to be assessed on the basis that the sale was a sale of a part of the gas company's undertaking as a going concern, including goodwill. And, further, that the arbitrator should take into consideration the contingency of the council not continuing to take a supply of gas from the company, and should assess compensation in respect of the mains and pipes outside the district of the council provided by the company for supplying gas within such district upon that basis (*In re Hucknall U. D. C. and South Normanton, etc. Gas Co., Ltd.* (1905), 69 J. P. 329; 3 L. G. R. 704; 25 Digest 493, 128). See also pp. 355, 356, *ante*, for other decisions upon the construction of "purchase clauses."

Lighting and
Watching
Act, 1833,
to be super-
seded by
this Act.

163. Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment (a), the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded (b) by this Act; and all lamps lamp posts gas pipes *fire engines hose* (c) and other property vested in the inspectors for the time being under the said Act shall vest in the authority having under this Act jurisdiction in such place.

As to the circumstances under which this section is sometimes put in force in rural parishes, see note to s. 161, *ante*, p. 4445.

(a) This appears to refer to the former s. 272 and to s. 276, *post*, p. 4502.

(b) This unusual word is introduced from Local Government Act, 1858, s. 46. It is not the same as *repealed*, and, therefore, so much of the Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186), as relates to watching is not, as it seems, affected by this section. The watching provisions are, however, obsolete.

The Lighting and Watching Act, 1833, enabled the inhabitants of parishes, or defined parts of parishes, to adopt the Act and appoint inspectors for carrying into execution its powers for the lighting of streets and public places. Those powers did not extend to the establishment of gas works or the supply of gas to private consumers. Under the L. G. A., 1894, *post*, p. 4892, the power of adopting the Act is now vested in the parish meetings of rural parishes, and upon such adoption the parish council, if there is one, becomes the authority for carrying it into execution. If it is

desired to limit the incidence of the expenses, as well as the actual lighting, to part only of a rural parish, a parish meeting for the adoption of the Act may be called for that part only. All lighting inspectors who were acting for entire rural parishes having parish councils were, upon the date of operation of the Act of 1894, superseded by such councils, and as regards inspectors who were acting for parts of parishes, provision was made that either the parish meeting, or the inspectors themselves, might transfer the inspectors' powers to the parish council. There are now very few lighting inspectors.

In cases where a rural district council possess urban powers under s. 161 (first paragraph), in regard to a parish, and have exercised those powers, it would seem that that council should carry out any necessary lighting, and that an adoption of the Act of 1833 by the parish meeting would be of no effect. The rural council may, however, delegate their powers to the parish council. If such urban powers, though granted, have not been exercised by a rural council, and the parish meeting desire to adopt the Act of 1833 with a view to the required lighting being regulated under that Act, the parish council should approach the rural council and the M. of H. with a view to the rescission of the urban powers order. Exceptional circumstances should, however, be shown to justify such an Order, as action by a Rural Council has many advantages over the other procedure.

(c) The words in italics were repealed by the Fire Brigades Act, 1938, Sched. III.; 31 Halsbury's Statutes, 585.

PUBLIC PLEASURE GROUNDS, ETC.

164. Any urban authority may purchase (a) or take on lease lay out plant improve (b) and maintain lands for the purpose of being used as public walks or pleasure grounds (c), and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever.

Urban authority may provide places of public recreation.

Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person infringing any such byelaw by any officer of the urban authority or constable (d).

This section, it will be observed, applies to urban districts only, but a rural council might apply to the M. of H. for urban powers enabling them to provide public walks or pleasure grounds in a particular parish. A general order to this effect was included in the Rural District Councils (Urban Powers) Order, 1931 (S. R. & O., 1931, No. 580). An alternative method, however, of providing a place for public recreation for the inhabitants of a rural parish is afforded by the L. G. A., 1894, s. 8 (1) (b), *post*, p. 4896, which enables parish councils to provide recreation grounds. Such councils moreover possess powers as to village greens, open spaces, and public walks which are for the time being under their control, or to the expense of which they have contributed. See ss. 6 (1) (c) (iii) and 8 (1) (d) of the Act of 1894.

See also, as to the powers of a county council in this behalf, the Open Spaces Act, 1906, s. 14, Vol. V., *post*.

There are wide powers of provision of facilities for recreation in the Physical Training and Recreation Act, 1937, *ante*, p. 1570.

(a) For the powers of local authorities as to purchase of land, see L. G. A., 1933, Purchase. Pt. VII., *ante*, p. 973.

On the question of the power of a local authority to provide a pleasure ground outside their district, the L. G. B. expressed the view that, while they were not aware of any legal objection to the purchase by an authority under the P. H. A., 1875, of land outside their district for purposes of a pleasure ground, difficulties might arise in recovering penalties under the byelaws, since under s. 253, *post*, p. 4482, proceedings could only be taken by a party aggrieved, or by the council of the district in which the ground was situate, except with the consent of the Attorney-General. Full powers now exist under ss. 157 and 159, L. G. A., 1933, *ante*, pp. 974, 977, for purchasing land outside the council's district.

Note to
Section 163.

Rural districts.

Land outside district.

**Note to
Section 164.**

Restrictive
covenants.

A corporation acquired land by private contract for the purpose of a public park, and covenanted to keep the land as an open space for the enjoyment of the public, "subject to no buildings or erections of any kind being put thereupon except such structures as summer houses, a bandstand or shelters not exceeding twelve feet in height for the accommodation and convenience of the public." The corporation were in the course of erecting shelters which contained places of convenience, such as lavatories and retiring rooms, for the use of the public. Under their local Act the corporation were authorised to erect conveniences in any public park, and under the P. H. A., 1875, they had a general power to erect conveniences, and also to purchase land for public parks. In an action by the vendors on the covenant, it was held (1) that a public convenience was not *ejusdem generis* with a shelter, and that the covenant had been infringed; (2) that the covenant was not void as imposing a fetter upon the corporation in the exercise of powers conferred upon them by statute for the public benefit (*Stourcliffe Estates Co., Ltd. v. Bournemouth Corporation*, [1910] 2 Ch. 12; 74 J. P. 289; 13 Digest 366, 991).

For a case arising out of the erection of a bandstand in breach of a covenant, see *Palliser v. Dover Corporation* (1914), 58 Sol. J. 379; 31 Digest 168, 3014.

When purchasing land for a pleasure ground, a local authority should take care that third parties do not possess rights which will prevent its being used by the public (*Deane v. Ramsgate Corporation* (1892), 8 T. L. R. 199).

As to the modification and discharge of restrictive covenants, see s. 84 of Law of Property Act, 1925; Vol. V. and 15 Halsbury's Statutes 260.

Extent of
powers as
to "laying
out," etc.

(b) Prior to the P. H. A., 1907, *post*, p. 5035b, the L. G. B. were decidedly liberal in their interpretation of the words "lay out, plant, improve," and they sanctioned loans upon estimates which included such items as greenhouses, reading-rooms, bandstands, gymnastic appliances, shelters, cycle-tracks, bowling-greens and lakes. Questions sometimes arose, however, as to whether a proposed building or appliance could properly be provided as an adjunct to a public pleasure ground, more especially if it was intended to make a charge for its use. See now, however, Part VI. of the P. H. A., 1907, *post*, p. 5053, which largely extend the powers of a district council when declared in force in their district by order of the M. of H.

These sections are amended and extended by Part VI. of P. H. A., 1925, Vol. V., *post*, which applies to all districts in which Part VI. of the P. H. A., 1907, is in force.

Subject to any restrictive covenants or conditions affecting the land, an authority in whose district the P. H. A., 1907, s. 76, *post*, p. 5053, is in force, can apparently set apart a portion of a public park or recreation ground for golf (or any other game). Charges can now be made for the use of the links (or ground) under s. 56 (5), P. H. A., 1925, Vol. V., *post*. See also the Physical Training and Recreation Act, 1937, *ante*, p. 1570, as to a general power of providing grounds for organised games.

Foreshore

It occasionally happens when a local authority become lessees of the seashore, that they are confronted with claims which conflict with their right of control and management. It was held that a prescriptive right to go upon a foreshore which had been leased to a corporation, and to place and let on hire chairs and seats on the sands for profit could not be claimed, as the Prescription Act, 1832 (5 Halsbury's Statutes 823), does not apply to easements in gross (*Ramsgate Corporation v. Debling* (1906), 70 J. P. 132; 22 T. L. R. 369; 44 Digest 77, 577). As to the rights of the public on the foreshore, see *Brinckman v. Mailey*, [1904] 2 Ch. 313; 68 J. P. 534; 44 Digest 73, 591; *Brighton Corporation v. Packham*, p. 4455, *post*; and cases on pp. 4456 *et seq.*, *post*, as to byelaws regulating the user of the foreshore; and for a case where a custom to spread nets on land above highwater mark was established, see *Mercer v. Denne*, [1905] 2 Ch. 538; 70 J. P. 65; 44 Digest 67, 481. See also as to the rights of the public over a promenade made under local Acts, *Att.-Gen. v. Blackpool Corporation* (1907), 71 J. P. 478; 26 Digest 426, 1452, and *Walker v. Murphy*, [1915] 1 Ch. 71; 79 J. P. 137; 11 Digest 51, 747, as to a "town moor."

The plaintiff agreed with the defendants to supply a band to perform on the sea front. It was a term of the contract that the defendants should hire out 500 chairs to the plaintiff for a certain period at a fixed rental. The plaintiff was entitled to let these chairs to the public, and was under covenant to repair and redeliver them in good order at the end of the term. The plaintiff alleged that many of the chairs as delivered were unfit for use, and that the defendants had been guilty of a breach of an implied term in the contract by allowing persons to use free seats near

the band. In an action for damages, the jury found that some of the chairs as delivered were unfit for use, and that the plaintiff had suffered damage owing to the use of the free seats. It was held that there was an implied warranty that the chairs as delivered should be fit for use, but that it was not a further implied term of the agreement that the defendants should not permit the use of free seats (*Dare v. Bognor U. D. C.* (1912), 76 J. P. 425; 28 T. L. R. 489; 12 Digest 615, 5088).

Where a council provided deck chairs for use on the foreshore and did not limit their liability by a notice on a board where the chairs were stacked but printed on the back of the ticket given to a hirer the words "The council will not be liable for any accident or damage arising from hire of chair" they were held liable to a person injured as a result of the chair breaking (*Chapelton v. Barry U. D. C.*, [1940] 1 K. B. 532; [1940] 1 All E. R. 356; Digest Supp.).

(c) Where, by Act of Parliament, a corporation was directed to cause a piece of land to be drained and levelled, and kept in proper condition for the purpose of public recreation, the court restrained the corporation from permitting a cattle fair to be held upon it (*Att.-Gen. v. Southampton (Mayor of)* (1859), 1 Giff. 363; 24 J. P. 131; 36 Digest 252, 42). A local authority were also restrained from letting a recreation ground to a football club, even for one day (*Att.-Gen. v. Loughborough L. B.*, Times, May 31st, 1881). In another case, a municipal corporation purchased a piece of land under the corresponding provisions of the P. H. A., 1848, s. 74. In 1875 the corporation determined to appropriate about a quarter of an acre at one extremity of the land as a site for the erection of town buildings and a museum, public library, school of art, and conservatory. It was held by Bacon, V.-C., that no portion of the land could be appropriated for any of these objects except the museum and conservatory. It was held, on appeal, that the erection of a free library was allowable, as being conducive to the better enjoyment of the public walks and grounds as such (*Att.-Gen. v. Sunderland (Corporation of)* (1876), 2 Ch. D. 634; 40 J. P. 564; 36 Digest 251, 33). See also *Att.-Gen. v. Sunderland Corporation*, [1930] 1 Ch. 168; 94 J. P. 57; Digest Supp.; *Att.-Gen. v. Poole Corporation*, [1938] 1 Ch. 23; [1937] 3 All E. R. 608; Digest Supp.; *Att.-Gen. v. Folkestone Corporation*, ante, p. 4276; *Att.-Gen. v. Leeds Corporation* (1880), 24 Sol. J. 509; *Att.-Gen. v. Bradford Corporation* (1911), 75 J. P. 553; 55 Sol. J. 715; 36 Digest 246, 9; *Walker v. Murphy*, [1915] 1 Ch. 71; 79 J. P. 137; 11 Digest 51, 747, and other cases collected in notes to s. 163 (1) of the L. G. A., 1933, ante, p. 989, as to the permanent application of land to a purpose other than that for which it was acquired.

Note to
Section 164.

User of
pleasure
ground:
alienation
for different
purpose.

When it was proposed by a local authority to appropriate part of a public pleasure ground to some other purpose, the L. G. B. declined under ordinary circumstances to entertain the proposal on the ground that the public has acquired conflicting rights, which, according to *Att.-Gen. v. Sunderland*, supra, must be respected. It is understood, however, that the M. of H. have considerably modified the view taken by their predecessors in view of s. 95 of the P. H. A., 1907, post, p. 5065.

The P. H. A., 1890, s. 44 (1), post, p. 4818, gives an authority limited powers to close a park or pleasure ground for short periods, and to give the use thereof to societies, etc.; *ibid.*, s. 44 (2), deals with pleasure boats; and *ibid.*, s. 45, enables an authority to contribute to the cost of pleasure grounds provided by individuals.

Where put in force by order of the L. G. B. or M. of H., the P. H. A., 1907, s. 76, post, p. 5053, makes further provision as to such matters as skating, games, music, chairs, pavilions and refreshment-rooms in parks and pleasure grounds. See also *ibid.*, s. 77, as to enforcing byelaws and regulations. The powers of s. 76 of the 1907 Act are considerably extended by s. 56 of the P. H. A., 1925, Vol. V., post, which applies to all districts in which Part VI. of the 1907 Act is in force.

Under the Physical Training and Recreation Act, 1937, ante, p. 1570, local authorities may provide grounds for football, cricket and other games.

A gift, devise, or bequest for the providing of a public park, etc., is, subject as therein mentioned, exempted from the operation of the Mortmain and Charitable Uses Act, 1888, post, p. 4771, by s. 6 thereof, as extended by the Mortmain and Charitable Uses Act Amendment Act, 1892, post, p. 4836. See, however, s. 29 of the Settled Land Act, 1925; 17 Halsbury's Statutes 868. Purchases of land for the purposes of this section are exempt by virtue of the L. G. A., 1933, ss. 31 (2), 32 (2), ante, p. 766.

Other Acts relating to the providing of public parks and recreation grounds are Towns Improvement Clauses Act, 1847, s. 135; 13 Halsbury's Statutes 576;

Other
statutory
provisions as
to parks,
pleasure
grounds, and
open spaces,
etc.

**Note to
Section 164.**

Recreation Grounds Act, 1859; 12 Halsbury's Statutes 369; Public Improvements Act, 1860; 12 Halsbury's Statutes 371; Public Health Act, 1925, s. 69; Vol. V. and 13 Halsbury's Statutes 1146. The Town Gardens Protection Act, 1863; 12 Halsbury's Statutes 372, provides for the protection of gardens and ornamental grounds, as to which see also Larceny Act, 1916, s. 8; 4 Halsbury's Statutes 818.

Town Gardens Protection Act, 1863, s. 1, *ante*, p. 4254, provides that when in any city or borough any enclosed garden or ornamental ground has been set apart, otherwise than by the revocable permission of the owner thereof, in any public square, etc. for the use or enjoyment of the inhabitants thereof, and when the trustees or other body appointed for the care of the same have neglected to keep in proper order, or when such garden or ground has not been vested or placed in the management of trustees, etc. for the care of the same, and from want of such care or any other cause has been neglected, the corporate authorities shall take charge of the same, putting up a notice to that effect in such garden or ground. As to the meaning of the words "otherwise than by the revocable permission of the owner," see *Tulk v. Metropolitan Board of Works* (1868), L. R. 3 Q. B. 94, 682; 32 J. P. 548; 36 Digest 248, 24.

See also the provisions of the Inclosure Acts as to allotments for recreation or other public purposes: Inclosure Act, 1845; Commons Act, 1876; Commons Act, 1879; Commonable Rights Compensation Act, 1882, s. 3 (2 Halsbury's Statutes 443, 579, 602, 605).

As to the metropolis, see Metropolis Management Act, 1855, s. 114 (11 Halsbury's Statutes 913); Metropolis Management Amendment Act, 1856, ss. 10, 11 (11 Halsbury's Statutes 960, 961); Town Gardens Protection Act, 1863 (12 Halsbury's Statutes 372); Metropolitan Commons Act, 1866 (2 Halsbury's Statutes 567); Metropolitan Commons Amendment Act, 1869 (2 Halsbury's Statutes 579); Metropolitan Board of Works (Money) Act, 1878, ss. 8, 9; Metropolitan Board of Works (Money) Act, 1879, ss. 4, 5, 11; Metropolitan Board of Works (Money) Act, 1880, ss. 3, 5, 6; Commonable Rights Compensation Act, 1882 (2 Halsbury's Statutes 603); Metropolitan Commons Act, 1898 (2 Halsbury's Statutes 607).

See also as to the management by local authorities generally of open spaces and disused burial grounds, the Open Spaces Act, 1906, *post*, p. 5016.

A faculty cannot be granted authorising a churchyard to be appropriated as a public garden. But it was held to be in the discretion of the Consistory Court to authorise by a faculty the construction of footpaths in it for the convenience of the parishioners, the removal of high walls which obstruct the free circulation of air, the planting of it with trees and flowers when it is closed for burials, and the erection of gates in order to give the parishioners access to it, and other minor alterations (*R. v. Twiss* (1869), L. R. 4 Q. B. 407; 7 Digest 553, 306). See *Paddington (Vestry of) v. Earl of Meath and Metropolitan Public Gardens Association* (1898), Times, March 12th; the Open Spaces Act, 1887, *post*, p. 4699, and the applications for faculties under it in the cases of *Re Mount Street Burial Ground* (1888), 4 T. L. R. 661; *Re St. George-the-Martyr, Queen's Square*, *ibid.*, 703; *Re Camden Town Burial Ground* (1888), 5 T. L. R. 311; *Re St. George-in-the-East* (1876), 1 P. D. 311; 7 Digest 555, 319; *Re St. John's, Hackney*, and *Re St. Mary, Islington* (1893), Times, April 21st; and see now also the Open Spaces Act, 1906, *post*, p. 5016, which repealed the Act of 1887, except so much of s. 4 as amends the Disused Burial Ground Act, 1884, *post*, p. 4694. And see also *Re St. Anne, Limehouse* (1915), 31 T. L. R. 539; 7 Digest 557, 332, where on an application by the rector and churchwardens and by the L. C. C. for a faculty authorising an agreement by which the Council was to acquire a strip of a disused burial ground for widening a road the Court declined to decide whether the Council has statutory authority to acquire the freehold of consecrated land and determined to deal with the case in its discretion under the usual procedure which is to grant a user of the land. As to the power of urban authorities to repair fences surrounding burial grounds, see Local Government Act, 1858 (Amendment) Act, 1861, s. 21, re-enacted in Sched. V., *post*, p. 4528.

The statutes which provided for the procuring of public libraries and public museums have all been repealed and consolidated by the Public Libraries Act, 1892, which has been in turn amended by the Public Libraries (Amendment) Act, 1893, the Public Libraries Act, 1901, and the Public Libraries Act, 1919; and see the Libraries Offences Act, 1898. All of these Acts are set out, *post*, pp. 4840, 4871, 4995, 5238, 4948.

Malicious Damage Act, 1861, s. 39 (4 Halsbury's Statutes 573), renders persons who wilfully injure works of art monuments or statutes in public streets punishable as for a misdemeanor. **Note to Section 164.**

As to telegraph wires above recreation grounds, see the Telegraph (Construction) Act, 1908, s. 3 (19 Halsbury's Statutes 293).

As to park keepers taking tobacco, etc. from persons apparently under sixteen, see the Children and Young Persons Act, 1933, s. 7 (26 Halsbury's Statutes 176). Authority's liability for

As to an authority's liability in respect of accidents in recreation grounds vested in them, see *Giles v. London C. C.* (1903), 68 J. P. 10; 36 Digest 93, 616 (cricketer colliding with notice board); *Hastie v. Edinburgh Magistrates*, [1907] S. C. 1102, and *Stevenson v. Glasgow Corporation*, [1908] S. C. 1034 (children falling into lake or stream); *Glasgow Corporation v. Taylor*, [1922] 1 A. C. 44; 86 J. P. 89; 36 Digest 70, 453 (child eating poisonous berries in botanical garden); *Purkis v. Walthamstow B. C.* (1934), 98 J. P. 244; Digest Supp. (unattended swing); *Ellis v. Fulham B. C.*, [1938] 1 K. B. 212; 101 J. P. 469; Digest Supp. (glass in paddling pool); *Coates v. Rautenstall Borough Council*, [1937] 3 All E. R. 602; 101 J. P. 483; 35 L. G. R. 614; Digest Supp. (chain on children's chute); cf. also *Schofield v. Bolton Corporation* and other cases cited in note to s. 305 of the P. H. A., 1936, *ante*, p. 645.

As to the assessment of lands acquired and maintained as a park for the perpetual use by the public for exercise and recreation, see *Lambeth Overseers v. London C. C.*, [1897] A. C. 625; 61 J. P. 580; 36 Digest 247, 12; *Pontefract Assessment Committee v. Pontefract Park Trustees* (1898), 78 L. T. 738; 36 Digest 248, 22; *Manchester Corporation v. Chorlton Union* (1899), 15 T. L. R. 327; *Liverpool Corporation v. West Derby Union*, [1908] 2 K. B. 647; 72 J. P. 397; 36 Digest 248, 20; *London Playing Fields Society v. Essex (S.W. Area) Assessment Committee* (1930), 94 J. P. 241; Digest Supp. For Scotch decisions on the subject, see *Glasgow Parish Council v. Glasgow Assessor*, [1912] S. C. 818; *Edinburgh Parish Council v. Leith Magistrates*, [1912] S. C. 812.

A local authority bought land under s. 164 for the purpose of a public pleasure ground. They were bound by covenants in their conveyance to keep this land open as a recreation and pleasure ground for the use of the public for ever, and they expended an annual sum of £400 in maintenance, at the same time receiving a much smaller sum from such sources as refreshment contractors. It was held that the land could not be regarded as *extra commercium*, and that the authority as owners of it must bear an apportioned share of the cost of making up the private street upon one side of which it abutted (*Herne Bay U. D. C. v. Payne*, [1907] 2 K. B. 130; 71 J. P. 282; 36 Digest 247, 15).

(d) As to the making, confirming, and publishing of byelaws, see Part XII. of the L. G. A., 1933, *ante*, p. 1093; and as to the enforcing them, see s. 251, *post*, p. 4481. The section in the text gives a power not previously enjoyed—namely, one for the removal of persons offending against the byelaws. Model byelaws have been issued under this section. Under the Advertisements Regulation Act, 1907, s. 2, local authorities can make byelaws regulating the exhibition of advertisements which affect injuriously the amenities of public parks, pleasure promenades, and ancient monuments. The power to make byelaws under this Act is extended by the Advertisements Regulation Act, 1925. See the Acts, *post*, p. 5032 and Vol. V.

In some cases a public pleasure ground vests in the council of a borough in their municipal capacity. Under such circumstances the M. of H. did not consider that it is competent to the council to exercise the power of making byelaws under s. 164, *supra*, in relation to such a pleasure ground. But the position can be met by the exercise of the powers conferred by ss. 12 and 15 of the Open Spaces Act, 1906, *post*, pp. 5022—3.

The powers of a district council under s. 164, *supra*, and s. 44 of the P. H. A., 1890, *post*, p. 4818, as regards byelaws and otherwise in relation to recreation grounds and public walks, are made applicable to parish councils by the L. G. A., 1894, s. 8(1) (d), *post*, p. 4896, for the purpose of enabling such councils to regulate recreation grounds, village greens, open spaces, or public walks which are for the time being under their control or to the expense of which they have contributed.

By a scheme made under the Metropolitan Commons Act, 1866 (2 Halsbury's Statutes 567), and confirmed by the Metropolitan Commons Supplemental Act, 1877, it was provided that a common should be dedicated to the use and recreation of the public as an open and unenclosed space for ever; and the Metropolitan Board of

Note to Section 164. Works were empowered to frame byelaws and regulations for the prevention of nuisances and the preservation of order on the common. The Board made a byelaw prohibiting the delivery of any public speech, lecture, sermon, or address of any kind, except with the written permission of the Board first obtained, and upon such portions of the common, and at such times as might be directed by such permission and sanctioned by the Board:—*Held*, that such byelaw was valid. No right of the general public to hold meetings on a common is known to the law (*De Morgan v. Metropolitan Board of Works* (1880), 5 Q. B. D. 155; 44 J. P. 296; 11 Digest 88, 1077). The decision was followed in *Brighton Corporation v. Packham* (1908), 72 J. P. 318; 24 T. L. R. 603; 44 Digest 77, 576, where the corporation, owners of the foreshore, obtained an injunction restraining members of a mission from preaching and holding meetings thereon.

A byelaw prohibiting meetings in public parks without the written consent of the local authority was held *intra vires* the powers conferred by a local Act to make byelaws for the good government and regulation of the public parks, etc. (*Aldred v. Miller*, [1925] S. C. (J.) 21; 36 Digest 249, o).

A byelaw relating to a common provided that "no person shall shoot or chase game or other birds or animals on the common." The respondent carried a tame pigeon and a falcon, and when on the common let them both go, and ran after them for half a mile, watching the chase:—*Held*, that this was an offence within the meaning of the byelaw (*Harper v. Michell* (1879), 44 J. P. 378; 11 Digest 89, 1082).

Under s. 164 (*supra*) a local board made byelaws for the regulation of a pleasure ground. One byelaw provided that no person should suffer any fowl belonging to him to enter or remain in the pleasure ground. The fine for offending was £5. B.'s six fowls strayed inside, there being no fence sufficient to prevent them:—*Held*, that the justices were right in refusing to convict, as the byelaw was repugnant to the law of England, and was not warranted by the section (*Torquay L. B. v. Bridle* (1882), 47 J. P. 183; 36 Digest 249, 29).

Where a local authority sold plots of land adjoining a proposed public park "together with a right of carriage horse and footway" through the park when laid out subject to any byelaws for the control of the park and subsequently (under a local Act which specifically authorised byelaws "for regulating or preventing the admission of horses or vehicles" to the park) made a byelaw prohibiting any motor car or other mechanically drawn vehicle from passing through any part of the park, the byelaw was held reasonable and valid although its effect was to prevent a purchaser of one of the plots from exercising his right of carriageway by motor car (*Att.-Gen. v. Hodgson*, [1922] 2 Ch. 429; 87 J. P. 121; 36 Digest 250, 30).

Byelaws as to foreshore.

An authority was empowered by a local Act to make byelaws and regulations with reference to the sea beach and foreshore in the district, which were vested in them for the purpose of public walks and pleasure grounds. After the passing of the local Act, a part of the foreshore was converted into an esplanade. The authority made a byelaw prohibiting the sale of any goods on any part of the sea beach, foreshore, or esplanade, except by the direction of the authority:—*Held*, that the byelaw was not unreasonable or *ultra vires* (*Gray v. Sylvester*) (1897), 61 J. P. 807; 46 W. R. 63; 38 Digest 165, 105). See also *Llandudno U. D. C. v. Woods*, [1899] 2 Ch. 705; 63 J. P. 775; 44 Digest 77, 575.

By a local Act a corporation was empowered to make byelaws for (*inter alia*) regulating the selling and hawking of any article . . . on the beach and foreshore, and No. 3 of such byelaws provided that "a person shall not on the said beach or foreshore sell or hawk, or offer, or expose for sale any article . . . except in pursuance of an agreement with the corporation . . ." It was held that the byelaw was unreasonable and bad on the ground that it gave the corporation power to make any agreement they chose without regard to the question of its reasonableness or unreasonableness, and that it reserved to them a right to refuse to give a licence to any particular person (*Parker v. Bournemouth (Mayor, etc. of)* (1902), 66 J. P. 440; 86 L. T. 449; 38 Digest 165, 107). See also *Moorman v. Tordoff* (1908), 72 J. P. 142; 98 L. T. 416; 38 Digest 160, 72.

The respondents' local Act empowered them to make byelaws for prohibiting or regulating the erection on the foreshore, sands or wastes, of any booth or other erection, which in their opinion might be a cause of danger, obstruction, nuisance, or annoyance, and generally for regulating the user of the foreshore, sands and

wastes. They made a byelaw in 1888 forbidding the erection of any booth or other erection on the foreshore, sands or wastes, provided that the prohibition should not apply in any case where the respondents granted permission for the erection, and in 1900 they made an additional byelaw that no person should on any part of the foreshore sell or offer for sale any commodity except on such part of the foreshore as they should by notice appoint for the purpose. The appellant erected without permission a certain structure (a coffee van) which the justices found to be an erection within the byelaw of 1888, and they convicted the appellant. A Divisional Court held (distinguishing the *Bournemouth Case*, *supra*) that the byelaw was valid, as the local Act gave power to the respondents to say that any booth or erection was *prima facie* a cause of danger, obstruction, nuisance or annoyance, and the byelaw was not rendered invalid by the fact that the respondents had reserved to themselves a power to grant permission in particular cases (*Williams v. Weston-super-Mare U. D. C.* (No. 1) (1907), 72 J. P. 54; 38 Digest 160, 75). The appellant then brought an action against the respondents in the Chancery Division, alleging a customary right exercised for sixty years to sell from a stall or otherwise on the foreshore, and claimed (a) a declaration that the said byelaws were *ultra vires* and void; (b) a declaration that his coffee van was not an "erection" within the meaning of the byelaw of 1889; and (c) an injunction to restrain the respondents from interfering with his selling from his coffee van on the foreshore. The court followed the decision of the Divisional Court on the points decided by them and also declined (following *Grand Junction Waterworks Co. v. Hampton U. D. C.*, [1898] 2 Ch. 331; 62 J. P. 566; 28 Digest 370, 54) to make a declaratory order under Order XXV., r. 5, with regard to the byelaw of 1900 (*Williams v. Weston-super-Mare U. D. C.* (No. 2) (1910), 74 J. P. 370; 103 L. T. 9; 38 Digest 160, 76).

Note to
Section 164.

Under the Hastings Improvement Act, 1885, the corporation may make byelaws "for the preservation of order and good conduct among persons frequenting the parades, stade, foreshore, and sands," and they accordingly made a byelaw, which was approved by the L. G. B., that no person should deliver an address on any part of the parades, stade, foreshore, or sands, except on such portions thereof as the corporation might by notice appoint for the purpose. The corporation by notice from time to time appointed certain portions of the stade as places at which addresses might be delivered, but these notices were not submitted to the L. G. B. for approval. The appellant, a member of the Salvation Army, conducted a religious service and delivered an address on a portion of the stade which was not one of the places so appointed, and was convicted of contravening the byelaw. It was held, that as the power to fix the places at which addresses might be delivered was set out in the byelaw it was not necessary to submit the notices to the L. G. B. for approval, and that the byelaw was valid, and therefore the conviction must be affirmed (*Slee v. Meadows* (1911), 75 J. P. 246; 105 L. T. 127; 38 Digest 161, 77).

Under the Ramsgate Corporation Act, 1900, the corporation "may make and enforce byelaws for the prevention of danger obstruction nuisance or annoyance to persons using the seashore . . . for regulating the selling and hawking of any article commodity or thing on the seashore . . .," and they made a byelaw that "where any part or parts of the seashore has, or have, by notices affixed in conspicuous positions on the seashore, been set apart by the corporation for the hawking of such articles commodities or things as may be specified in the notices, no person shall hawk any article, commodity or thing so specified on any other part of the seashore." Notices were put up setting apart a portion of the seashore for the hawking of certain articles and forbidding the hawking of them on any other portion. The corporation had let spaces for the erection of stalls on that portion of the seashore where hawking was prohibited. It was held that the byelaw was valid (*Cassell v. Jones* (1913), 77 J. P. 197; 108 L. T. 806; 38 Digest 160, 73).

As to byelaws regulating bathing from the foreshore, see *McGregor v. Disselduff*, p. 1094, *ante*.

An authority can now obtain powers to make byelaws as to the seashore and also as to promenades by procuring an order from the Home Secretary putting ss. 82, 83 of the P. H. A., 1907, *post*, pp. 5059—60, in force in their district.

165. Any urban authority may from time to time provide such Urban
clocks as they consider necessary, and cause them to be fixed on or authority

Section 165. against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time alter and remove any such clocks to such other like situation as they may consider expedient.

may provide
public clocks.

The provision in the text does not empower the urban authority to repair, etc. clocks not *provided* by themselves and not transferred to them, such as the clock of a parish church. The P. H. A., 1890, s. 46, *post*, p. 4819 (now of general application), extends this section so as to enable an authority to pay the reasonable cost of repairing, maintaining, winding up, and lighting any public clock within their district though not vested in them.

The provision in the Act of 1890, referred to above, enables an authority to incur expense in repairing, winding, etc. the clock in a church tower. If it is desired to place a *new* clock in a church tower, a necessary preliminary would seem to be the obtaining of a faculty from an ecclesiastical court.

The M. of H. are willing to sanction loans for the provision of public clocks by authorities, and to allow a term of ten years for repayment.

It will be observed that the section does not authorise the provision of a tower to contain a clock. In a case in which an urban council applied to the L. G. B. for sanction to a loan for the erection of an ornate tower with a clock at the summit, the Board considered that they were precluded from acceding to the application so far as the tower was concerned. It would seem, however, that the word "clock" must be regarded as including a case, and also some sort of support, and the Board raised no objection when the structure proposed was unpretentious and distinctly required for the purposes of the clock. The view of the M. of H. is probably similar. Apart from the powers of s. 165, *supra*, public clocks are sometimes provided under the Public Libraries Acts, the Municipal Corporations Act, 1882, and other Acts as part of a building erected under such Acts.

Under the P. H. A., 1890, s. 42, *post*, p. 4817 (now of general application), the authority may authorise the erection of a clock tower in any street or public place, and may maintain the same, and may also maintain a tower already erected.

It is not altogether clear that a parish council could legally incur expense in relation to a public clock even if it were transferred to them under the L. G. A., 1894, s. 8 (1) (h), *post*, p. 4896, or the L. G. A., 1933, s. 268, *ante*, p. 1148. The L. G. B. generally advised action by the rural district council under s. 165, *supra*, as extended by s. 46 of the Act of 1890, after obtaining from the Board an order conferring upon them the necessary urban powers. Such orders usually provide that the expenses shall be chargeable as special expenses to the parish concerned, but even so the council may contribute towards such expenses as part of their general expenses under s. 190 (4), L. G. A., 1933, *ante*, p. 1018. The actual maintenance of the clock can be delegated to the parish council.

* . * * * * *

POLICE REGULATIONS.

Incorporation
of certain
provisions of
10 & 11 Vict.
c. 89.

171. The provisions of the Town Police Clauses Act, 1847 (*a*), with respect to the following matters, (namely),

- (1) With respect to obstructions and nuisances in the streets (*b*) ; and
- (2) With respect to fires (*c*) ; and
- (3) With respect to places of public resort (*d*) ; and
- (4) With respect to hackney carriages (*e*) ; and
- (5) *With respect to public bathing* (*f*) ;

shall, for the purpose of regulating such matters in urban districts (*g*), be incorporated with this Act.

The expression in the provisions so incorporated " the superintendent constable," and the expression " any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act,

respectively include any superintendent of police, and any constable or officer of police acting for or in the district of any urban authority (*h*) ; and the expression "within the prescribed distance" (*i*) shall for the purposes of this Act mean within any urban district. Section 171.

Notwithstanding anything in the provisions so incorporated (*k*), a licence granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the licence, or until the next general licensing meeting where a day for such meeting is appointed.

(a) That is, Town Police Clauses Act, 1847, *ante*, p. 4222. In order to understand the incorporated clauses attention should be paid to other clauses in the Act, and consequently such as appear to be requisite are printed, *ante*, p. 4222, in addition to the clauses actually incorporated. The sections dealing with the various matters specified in s. 171 are referred to in the following notes. The notes to the several sections, *ante*, pp. 4222 *et seq.*, should also be referred to.

In *R. v. Hastings JJ., Ex parte Mitchell* (1925), 89 J. P. N. 86, it was held following *R. v. Smith* (1873), L. R. 8 Q. B. 146 ; 37 J. P. 214 ; 42 Digest 766, 1925, that the effect of this section was as if the words of the Act of 1847 had been repeated in this Act and accordingly an offence under one of the incorporated provisions was an offence under this Act. Service of a summons for an offence under s. 47 of the Act of 1847, *ante*, p. 4241, is therefore good if made in compliance with s. 267 of this Act, *post*, p. 4495 ; see also note (*h*), *post*, p. 4460.

(b) See ss. 21—29 of the Act of 1847, *ante*, pp. 4224—4233. The provisions refer more to police control than to the actual powers of local authorities, and some of the etc. in offences mentioned therein are also dealt with in the Highway Act, 1835, s. 72 streets. (9 Halsbury's Statutes 86). See also the provisions of ss. 3, 79—81 of the P. H. A., 1907, *post*, pp. 5037, 5055—58.

(c) The original effect of this provision was to incorporate ss. 30—33 of the Act of 1847 (*ante*, p. 4233, and 13 Halsbury's Statutes 603, 604). But by s. 30 and Sched. III., Pt. I., of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 602, 604), this paragraph is repealed as from July 29th, 1938, in so far as it incorporates s. 32 ; and by *ibid.*, Sched. III., Pt. II., it is repealed as from July 29th, 1940, in so far as it incorporates s. 33. The urban authority derive from this paragraph their powers for the extinction of fires, the establishment of fire brigades, the erection of fire-engine stations, etc. Their duty in connection with the provision of an adequate water supply for fire extinction is now laid down in s. 2 of the Fire Brigades Act, 1938 (31 Halsbury's Statutes 588). As to pensions for professional firemen, see the Fire Brigade Pensions Act, 1925, Vol. V., *post*. Under s. 13 (4), Finance Act, 1920 (16 Halsbury's Statutes 853), motor fire engines are exempt from licence duties.

The Royal Commission on Fire Brigades and Fire Prevention in their report of July 20th, 1923, discussed the whole subject and made many recommendations. A summary is given in "Local Government, 1924," pp. 150 *et seq.* The recommendations have largely been incorporated into the Act of 1938.

(d) See ss. 34—36 of the Act of 1847, *ante*, pp. 4235, 4236. See also s. 164 of the present Act, *ante*, p. 4451. Places of public resort.

(e) See ss. 37—68 of the Act of 1847, *ante*, pp. 4236—4246. These provisions have been extended and applied to omnibuses, stage coaches, etc., by Town Police Clauses Act, 1889, which is also set out, *post*, p. 4784. By s. 2 of that Act, it is to be deemed to be incorporated with the P. H. A., 1875, by the provisions in the text. Hackney carriages.

It will be seen that the incorporated clauses enable byelaws to be made in respect of hackney carriages ; and the M. of H. have model byelaws on this subject. For decisions upon such byelaws, see notes to s. 68 of the Act of 1847, *ante*, p. 4246. See also note (*g*), *infra*.

(f) The words in italics were repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I., *ante*, pp. 720, 728. See *ibid.*, s. 231, *ante*, p. 495. Public bathing.

(g) It will be observed that this section applies to urban districts only. If, however, a rural council are of opinion that the provisions, or some of them, should be put in force in their district or certain parishes therein, they may apply to the M. of H. for an order for the purpose under s. 276, *post*, p. 4502 ; or, the application Rural districts.

**Note to
Section 171.**

may be made by ratepayers whose united hereditaments represent at least one-tenth of the rateable value of the district or parish, by the county council or by a parish council. See the L. G. A., 1894, s. 25 (7), *post*, p. 4907. A copy of the resolution authorising the application should be forwarded by the clerk, together with a short statement of grounds.

If the application relates to "obstructions, etc., in streets" such as are dealt with in s. 28 of the Act of 1847, *ante*, p. 4226, the precise paragraphs of that section which are required should be specified, and in this connection the council might ascertain whether the offences in question are not already adequately dealt with by the Highway Act, 1835, s. 72 (9 Halsbury's Statutes 86), which is in force in rural as well as urban districts. See also note (b), above.

If the application relates to "hackney carriages," it should be stated whether it is desired to regulate omnibuses also (see note (e), *ante*, p. 4459). So long as a rural district is not subject to an urban powers order hackney carriages are apparently not subject to any regulation. It should be noted, however, that a Departmental Committee on the Licensing and Regulation of Public Service Vehicles in their First Interim Report dated May 28th, 1925, recommended that the licensing authorities should be county councils and county borough councils, the councils of those non-county boroughs and urban districts which had a population at the last census of 20,000 or upwards, and of those rural districts which had a similar population and already possess licensing powers. These views now influence the M. of H. in dealing with applications of this character from rural district councils. It is interesting to observe that if full effect were given to the Committee's recommendations the number of licensing authorities outside the Metropolitan Police District would be reduced to 302. The M. of H. would not grant the powers to a rural district council within the Metropolitan Police District however populous.

Who may
prosecute.

(h) By s. 28 of the Town Police Clauses Act, 1847, *ante*, p. 4226, everyone who, to the annoyance and danger of the passengers, wantonly throws stones is liable to a penalty. By s. 171, *supra*, the provisions of the Town Police Clauses Act, 1847, with respect to the above, are incorporated "for the purpose of regulating such matters in urban districts." It is provided by s. 253, *post*, p. 4482, that "proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than a party aggrieved, or by the local authority of the district in which the offence is committed":—*Held*, that the district superintendent of police could lay an information under s. 28 of the Town Police Clauses Act, 1847, although not the party aggrieved nor authorised by the local authority (*Jobson v. Henderson* (1900), 64 J. P. 425; 82 L. T. 260; 38 Digest 170, 139). That case was not followed in *Sheffield Corp'n. v. Kisson*, [1929] 2 K. B. 322; 93 J. P. 135; 27 L. G. R. 533; Digest Supp., where it was held that proceedings for plying for hire with an omnibus without a licence can only be instituted in accordance with s. 253, *post*, and that a director of a rival omnibus company is not a "person aggrieved" within that section. Lord HEWART, C.J., in the *Sheffield Case* pointed out that the part of the Act of 1847 dealing with the recovery of penalties is not incorporated in this Act and that this part was doubtless omitted because of the provisions of s. 253, *post*. It would seem, therefore, safer not to rely upon *Jobson v. Henderson*, *supra*, but in all cases of offences under the incorporated provisions of the Act of 1847 to institute proceedings in accordance with s. 253, *post*. See also s. 253 and notes thereto, *post*, p. 4482.

"Prescribed
distance."

(i) The last interpretation removed a difficulty which was often felt in respect of "the prescribed distance," and prevents the inconvenience resulting from the contiguity of local districts.

Drivers'
licences.

(k) This enactment removed an impression which once prevailed, though whether correctly or not may be doubted, that though the owner of a carriage was to be licensed for a year only, a driver when once licensed retained his licence during the rest of his life.

Urban
authority
may make
byelaws for
licensing
horses, boats,
etc. for hire.

172. Any urban authority (a) may license (b) the proprietors drivers and conductors of horses ponies mules or asses standing for hire within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages (c), and may make byelaws (d) for regulating stands and fixing rates of hire, and

as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge. Section 172.

Any urban authority (a) may also license (b) the proprietors of pleasure boats and vessels (c), and the boatmen or other persons in charge thereof, and may make byelaws (e) for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge.

(a) The section now applies to rural authorities also, a general order having been made to that effect (Rural District Councils (Urban Powers) Order, 1931 (S. R. & O., 1931, No. 580)). Rural districts.

(b) Refusal of a licence is appealable to Quarter Sessions: see s. 7 of the P. H. A. A. Act, 1890, *post*, p. 4804, and *R. v. Essex J.J., Ex parte Barking U. D. C., ibid.* Licences.

(c) See previous section and note (e) thereto. Having regard to ss. 39 and 46 of the Town Police Clauses Act, 1847, *ante*, pp. 4238, 4240, which is applied to these licences by the provision in the text, it is suggested that for such licences fees may be charged not exceeding the fees authorised by those sections.

(d) As to the making, confirming, and publishing of byelaws, see Pt. XII. of the L. G. A., 1933, *ante*, p. 1093, and as to the enforcing of them, see s. 251, *post*, p. 4481. Byelaws.
Model byelaws under this section have been issued by the L. G. B. and from the M. of H.

(e) As to boats on lakes or waters in any park or pleasure ground provided by the local authority, see the P. H. A., 1890, s. 44 (2), *post*, p. 4819. Model byelaws have also been issued with reference to pleasure boats and vessels.

The vessels referred to in the text appear to be vessels used for pleasure, *e.g.*, yachts, and thus a ferry would not ordinarily come under the section, but there seems to be no authoritative decision as to the meaning of the expression "pleasure boats and vessels" as used in this Act.

This section does not authorise the licensing of boats or the making of a byelaw that proprietors of boats (not themselves acting as boatmen) must take out a licence: a byelaw requiring it, therefore, is *ultra vires* and bad, and an information purporting to be laid under such a byelaw was held to have been rightly dismissed (*Byrne v. Brown* (1893), 57 J. P. N. 741). A similar decision was arrived at under the words of a local Act in *Londonderry Harbour Commissioners v. Londonderry Bridge Commissioners*, [1894] 2 I. R. 384. Now, however, as to the licensing of boats, see s. 94 of the P. H. A., 1907, *post*, p. 5064, which may be put in force in any district by an order of the M. of H. Vessels licensed (more properly, certificated) by the Board of Trade under the Merchant Shipping Acts are excepted from the requirement of a licence under that section, but not apparently from byelaws under this section, if in fact they are also "pleasure boats."

PART V.

GENERAL PROVISIONS

* * * * *

ARBITRATION (a).

179. In case of dispute as to the amount of any compensation (b) to be made under the provisions of this Act (except where the mode of determining the same is specially provided for (c)), and in case of any matter which by this Act is authorised or directed to be settled by arbitration (d), then, unless both parties concur in the appointment of a single arbitrator (e), each party shall appoint an arbitrator to whom the matter shall be referred (f). Mode of reference to arbitration.

This section has been repealed by P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any un-repealed enactment in this Act or any Act directed to be construed herewith.

**Note to
Section 179.**

Application
of Arbitration
Act, 1889.

Application of
Acquisition of
Land (Assess-
ment of Com-
pensation)
Act, 1919.

Subject of
dispute.

Special
provisions.

Appointment
of arbitrator
by court.

Regulations
as to
arbitration.

(a) The Arbitration Act, 1889, s. 24, provides that that Act—*q.v.* as amended, *post*, p. 4793—shall apply to every arbitration under any Act passed before or after its commencement as if the arbitration were pursuant to a submission, except in so far as it is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised thereby. While, therefore, the Arbitration Act, 1889, will not repeal any of the provisions of this or the following sections, it will apply, in so far as it is not inconsistent, to arbitrations under this Act.

When a dispute as to compensation arises out of the compulsory acquisition of land, *i.e.* land or water, or any interest in land or water, or any easement or right in, to, or over land or water, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213, must now be consulted. As to the application of this Act to a claim for compensation in respect of the laying of a sewer in private land, see *Thurrock Grays and Tilbury Joint Sewerage Board v. Thames Land Co.* (1925), 90 J. P. 1; 23 L. G. R. 648; Digest Supp.

(b) It was formerly held that there must be a dispute only as to the amount of compensation and not as to the liability to pay it, and that a mere denial of liability by the authority was enough to suspend the right to proceed by way of arbitration (*R. v. Burslem L. B.* (1859), 28 L. J. Q. B. 345; *Re Bradby & Southampton L. B.* (1855), 4 E. & B. 1014; 19 J. P. 644; 38 Digest 174, 167. And see *R. v. Metropolitan Commissioners of Sewers* (1853), 1 E. & B. 694; 17 J. P. 264). These cases, however, were considered in *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595; 49 J. P. 84; 11 Digest 292, 2209, where it was decided that a person who claims compensation for damage sustained by reason of the exercise of powers given by the Act, is entitled under s. 308, *post*, p. 4515, to have the amount of compensation determined by arbitration in manner provided by the Act, even though a dispute exists as to the liability of those from whom he seeks to recover compensation; and that the prior determination of that question of liability is not a condition precedent to the claimant's right to go to arbitration in order to obtain an award as to the fact of damage and the amount of compensation. This decision renders it unnecessary to do more than mention *Burgess v. Northwich L. B.* (1877), 37 L. T. 355; (reported on another point, in (1880), 6 Q. B. D. 284; 45 J. P. 256; 26 Digest 335, 661, and *Utiley v. Todmorden L. B.* (1874), 39 J. P. 56; 44 L. J. C. P. 19). In the former a motion for a rule *nisi* to set aside an award on the ground that there was a dispute as to liability was dismissed, and in the latter an action was brought on an award when the liability was disputed.

(c) See, for example, s. 308, *post*, p. 4515, when the dispute may be referred to a court of summary jurisdiction.

(d) See s. 150, *ante*, and ss. 308, 328, *post*, pp. 4515, 4520.

(e) The Arbitration Act, 1889, s. 5, *post*, p. 4789, enables the court to appoint an arbitrator where a submission provides for reference to a single arbitrator "and all parties do not after differences have arisen concur in the appointment of an arbitrator." A contract between an authority and a contractor provided for the reference of differences to a single arbitrator. A difference having arisen, the contractor made proposals to the authority for the selection of an arbitrator, but they would not proceed with such selection. Thereupon the contractor served the authority with written notice "to concur in the appointment of a sole arbitrator in the matter." It was held that the notice given was a sufficient notice within s. 5 (*In re Eyre and Leicester (Corporation of)*, [1892] 1 Q. B. 136; 56 J. P. 228; 2 Digest 408, 629). It may be stated as a general rule that, where the conditions exist under which the section is applicable, the court or judge has no discretion to refuse to appoint an arbitrator (*ibid.*).

(f) See, however, s. 181, *post*, p. 4467, as to referring small claims to a court of summary jurisdiction.

180. With respect to arbitrations under this Act (a), the following regulations shall be observed; (that is to say,)

- (1) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if

such party be a corporation aggregate under their common seal (b) : Section 180.

- (2) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same (c) :
- (3) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation (d) :
- (4) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing (e) by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- (5) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing (e) from the other party in that behalf, the remaining arbitrator may proceed *ex parte* ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- (6) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose (f), the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :
- (7) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint (g) by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead ; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire (h) :
- (8) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire (i) :
- (9) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an

Section 180.

award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him (k) :

- (10) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace ; (that is to say,)

“ I A. B. do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

A. B.” (l).

- (11) Such declaration shall be annexed to the award when made ; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanor (l) :
- (12) Any arbitrator arbitrators or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred (m), and may examine the parties or their witnesses on oath :
- (13) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire (n) :
- (14) Any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto (o) :
- (15) The award (p) of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference (q).

This section has been repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith.

“ Under this Act.”

(a) When land was taken compulsorily by a council under the powers of the Lands Clauses Consolidation Acts, incorporated by s. 176 (now repealed), and an arbitration took place to determine the amount of compensation to be paid to its owner, the procedure with regard to such arbitration and the right to costs were formerly wholly governed by the provisions of those Acts, and not by this section (*Ex parte Rayner* (1878), 3 Q. B. D. 446 ; 42 J. P. 807), but see now the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213. Moreover, some arbitrations which were formerly “ under this Act,” *i.e.* the P. H. Act, 1875, will now be governed by the above mentioned Act of 1919, *e.g.*, an arbitration to assess the compensation for the laying of a sewer is now governed by the last-mentioned Act (*Thurrock Grays and Tilbury Joint Sewerage Board v. Thames Land Co.* (1926), 90 J. P. 1 ; 23 L. G. R. 648 ; Digest Supp.).

Appointment of arbitrator.

(b) Where a claimant agreed with a waterworks company that a person nominated by two others should be appointed arbitrator, and such person being so appointed awarded to the claimant a sum exceeding £50, the Court of Exchequer held that the latter was entitled to the costs of the arbitration, although the statutory preliminaries to a reference under the Lands Clauses Consolidation Acts had not in all respects been complied with (*Martin v. Leicester Waterworks Co.* (1858), 27 L. J. Ex. 432 ; see also *Collins v. South Staffordshire Rail. Co.* (1851), 7 Exch. 5 ; 13 Digest 393, 1180). But where, in an arbitration under this Act, one arbitrator was appointed by the local authority under their seal and another by the claimant, but not in writing under his hand, and the arbitrators appointed an umpire, who made an award in favour of the claimant, it was held that, the provisions of the statute not having been complied with, the appointment of the arbitrators, and consequently their

**Note to
Section 180.**

appointment of the umpire and his award were invalid, and that neither the original submission, nor the appointment of the umpire, nor the award could be made an order of court (*Re Gifford and Bury (Town Council of)* (1888), 20 Q. B. D. 368; 52 J. P. 119; 38 Digest 174, 164).

(c) See notes to s. 303 of the P. H. A., 1936, *ante*, p. 635.

(d) As one of the parties is a corporate body, the phraseology is not quite happy. Under the P. H. A., 1848, s. 123, the appointment in the case of a local board was signed by five members of the board, and as one of them might die, the legislature provided thus against the presumed consequence of his death. No such contingency can now arise with reference to the local authority.

Revocation
of death.

(e) See notes to P. H. A., 1936, s. 303, *ante*, p. 635, as to when an appointment is deemed to be made; and see ss. 266, 267, *post*, pp. 4494, 4495, as to the authentication and service of notices.

A frontager disputed an apportionment under s. 150, *ante*, p. 4388, whereupon the local authority appointed an arbitrator and gave notice of such appointment to the frontager. The frontager, without appointing an arbitrator, withdrew his notice disputing the apportionment within fourteen days, and the authority's arbitrator continued the reference, acting as sole arbitrator. It was held that the award was a nullity, as the arbitrator had no power to act as sole arbitrator. The frontager being entitled to withdraw his notice disputing the apportionment within the fourteen days, and having done so, there was no submission to arbitration (*Re Stoker and Morpeth Corporation*, [1915] 2 K. B. 511; 79 J. P. 201; 26 Digest 531, 2307).

(f) As to extending the time, see sub-s. (8), and note (i), thereto.

(g) In *Holdsworth v. Barsham* (1862), 2 B. & S. 480; 31 L. J. Q. B. 145, the arbitrators appointed an umpire before entering on the reference, but after the twenty-one days within which they ought by the P. H. A., 1848, s. 126, to have made their award, and it was held that such appointment was not too late. In the same case in the Exchequer Chamber (*sub nom. Holdsworth v. Wilson*) (1863), 4 B. & S. 1; 32 L. J. Q. B. 289; 38 Digest 174, 165, it was held that the power to appoint an umpire continued until the expiration of the time within which they might have made their award (in this Act two months: see sub-s. (9)).

Appointment
of umpire.

If the arbitrators cannot agree upon an umpire, there is no objection to their selecting by lot one of two persons, each of whom they both admit to be a fit person (*Re Hopper* (1867), L. R. 2 Q. B. 367; 31 J. P. 182; 2 Digest 320, 61). They must not, however, toss up to decide which of them shall nominate an umpire, nor must they select by lot one of two persons, each of whom is known only to one of them (*Pescod v. Pescod* (1887), 58 L. T. 76; 2 Digest 405, 610). The arbitrators ought to meet for the selection of an umpire; but having selected one, they need not sign his appointment in the presence of each other (*Re Hopper, supra*). His appointment need not be stamped unless it be by deed (*Routledge v. Thornton* (1812), 4 Taunt. 704; 2 Digest 404, 598).

(h) The Minister of Health must make the appointment; and, though no time is specified, he must do so within a reasonable time. The application must be made by one of the parties, and should be accompanied by copies of the appointments of the arbitrators and of the request to them to appoint an umpire. Some evidence may also be required by the Ministry of the failure of the arbitrators to comply with the request. The Minister refuses to act upon an application from the arbitrators or one of them.

The arbitrators cannot appoint an umpire after the expiration of the seven days mentioned in the sub-section.

It is advisable that the request to them to appoint should be in writing.

Where no request to the arbitrators to appoint an umpire was made within the period (two months from date of submission) during which they could make an award, the L. G. B. held that the arbitrators were not at the time of the request legally in a position to make an appointment, and that no such neglect or refusal to appoint was then possible on their part as would enable the Board to appoint. Under such circumstances proceedings should be begun *de novo*.

(i) The authority of the umpire commences at the end of the twenty-one days, or of the extended time, in the case of a failure to make the award. This is important, for it has been a common practice for umpires to calculate the time from the date

Time for
umpire's
award.

Note to
Section 180.

of their receiving notice of the fact that the arbitrators have failed to award: see *Skerratt v. North Staff. Rail. Co.* (1848), 17 L. J. Ch. 161; 11 Digest 191, 708. As to the right of a party to be heard by the umpire, see *Re Mairinder* (1883), 49 L. T. 535; 2 Digest 440, 903. It is usual to arrange for the umpire to sit with arbitrators to avoid the cost of a rehearing if they fail to agree.

Although no original limit of time is specially mentioned in the text within which an umpire must make his award, yet by analogy to the original limit fixed in the case of arbitrators, an original limit of twenty-one days from the date of the reference to him must be inferred to have been fixed in the case of an umpire, which under sub-s. (9) may not be extended beyond two months. Two arbitrators, appointed under the Act, met on January 3rd and extended the time for making their award till February 20th. On January 10th they appointed an umpire. On February 1st the arbitrators and umpire met and were attended by the parties, but one of the arbitrators retired and refused to proceed any further, and the meeting was adjourned *sine die*. On April 19th the umpire made his award. It was held that the award was made too late and must be set aside. It was also held that the date from which the twenty-one days must be reckoned was February 1st, when the arbitrators finally disagreed, and not February 20th, when their powers expired (*Re Yeadon L. B. and Yeadon Waterworks Co.* (1889), 41 Ch. D. 52; 38 Digest 175, 171).

Extension of
time for
award.

(k) A reference to arbitration under the Lands Clauses Acts was held to be subject to the provisions of the Common Law Procedure Act, 1854 (13 Halsbury's Statutes 175), with respect to referring back an award to the arbitrator, and to enlarging the time by the court notwithstanding the expiration of the time within which the award should have been made (*In re Dare Valley Rail. Co.* (1869), 4 Ch. App. 554; 2 Digest 635, 2617; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; 2 Digest 459, 1061). These cases were followed with reference to an arbitration under this section in *Warburton v. Haslingden L. B.* (1879), 48 L. J. Q. B. 451; 2 Digest 316, 35, a previous decision in *Kellett v. Tranmere L. B.* (1864), 34 L. J. Q. B. 87; 28 J. P. N. 742; 38 Digest 175, 170) being dissented from. It would appear, therefore, that, notwithstanding the provisions in the text, the time for making the award may be extended beyond the period of two months, as in *Re Ward & Secretary of State for War* (1862), 32 L. J. Q. B. 53; 2 Digest 421, 724; even when the award has been made after the two months has elapsed, as in *Lord v. Lee* (1868), L. R. 3 Q. B. 404; 2 Digest 421, 728; *Re Warner and Powell* (1866), L. R. 3 Eq. 261; 2 Digest 421, 727; *May v. Harcourt* (1884), 13 Q. B. D. 688; 2 Digest 421, 725. In *Re Mackenzie and the Ascot Gas Company* (1886), 17 Q. B. D. 114, it was held that the section could not enlarge the time for making an award under the above section beyond the period of two months; but this case, in which *Warburton v. Haslingden L. B.* was not cited, has since been overruled in *Knowles v. Bolton Corporation*, [1900] 2 Q. B. 253; 2 Digest 420, 722, where it was decided by the Court of Appeal that the court has power under the Arbitration Act, 1889, s. 9, *post*, p. 4790, to enlarge the time for making an award beyond two months from the date of the submission notwithstanding s. 180 (9). So too, under the similar provisions of the Irish Public Health Act it has been held that the court can remit an award to the umpire for his reconsideration, although the two months have expired (*In re Hurley and Queenstown U. D. C.* (1913), 47 Ir. L. T. 117).

(l) Compare Lands Clauses Consolidation Act, 1845, s. 33, and see the notes thereto, *ante*, p. 4116. An umpire, appointed under this Act, failed to make the declaration and annex it to his award. One of the parties, on becoming aware of the omission, at once took steps and succeeded in setting aside the award (*Ludlow Corporation v. Prosser* (1906), 70 J. P. 400; 38 Digest 175, 175).

Arbitrator's
powers.
Costs.

(m) See note as to arbitrator's powers, *ante*, pp. 635—6.

(n) See *Peake v. Finchley L. B.*, *ante*, p. 636.

The court has no power to compel an arbitrator to submit his costs—i.e., the fees payable to him—to arbitration. The proper remedy for extortionate charges by an arbitrator was (1) to apply to have his award set aside; or (2) to bring an action for the recovery of a portion of the charge; or (3) to call upon the court to compel him

to make his award (*Wickington v. Wrexham Waterworks Co.* (1884), 32 W. R. 1000; 2 Digest 425, 763). See also *In re Gilbert and Wright*, ante, p. 636. Upon taxation of the costs of an arbitration as between the parties to the reference, the taxing master disallowed £119 of the sum paid to the arbitrators and umpire for their fees on the taking up of the award. In an action brought to recover from the arbitrators and umpire the amount so disallowed, it was held that in order to succeed the plaintiffs must show that the fees charged were unreasonable and extortionate; and, further, that the certificate of the taxing master was not evidence that the amounts disallowed by him were unreasonably charged (*Llandrindod Wells Water Co. v. Hawksley* (1904), 68 J. P. 242; 20 T. L. R. 241; 2 Digest 428, 787).

Note to
Section 180.

But see now s. 13 of the Arbitration Act, 1934, referred to in the notes, ante, pp. 636-7.

(o) That is, of either division of the High Court. The court has the same jurisdiction with respect to such a rule as in ordinary cases (*In re Harper and G. E. Rail. Co.* (1875), L. R. 20 Eq. 39; 11 Digest 197, 761). The application to make the submission a rule of court should be made *ex parte* (*Wood v. Birch*, [1889] W. N. 126; *Re Davey and the Railway Passenger's Assurance Co.* (1880), 49 L. J. Ch. 568; 43 L. T. 234).

Making sub-
mission a
rule of Court.

As to action on the award, see note at ante, p. 637.

(p) A uniform duty of ten shillings is imposed by the Revenue Act, 1906, s. 9 (16 Halsbury's Statutes 735).

Stamp on
award.

(g) These words are somewhat more emphatic than those used in the Lands Clauses Consolidation Act, 1845, ss. 25, 27, 37, ante, pp. 4114, 4117, but the effect appears to be the same. For notes on this question generally, see ante, p. 637.

Finality of
award.

181. All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a court of summary jurisdiction (a), but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid (b).

Claims under
twenty
pounds may
be referred to
court of
summary
jurisdiction.

This section is repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2) ante, pp. 720, 728, except so far as may be material for the purposes of any un-repealed enactment in this Act or any Act directed to be construed herewith.

(a) See the definition, ante, p. 4345.

(b) Under the Huddersfield Improvement Act, 1871, which incorporated the Lands Clauses Act, power was given to the corporation to lay sewers in lands, making full compensation for any damage; and, where the method of recovering compensation was not provided, two justices might hear and determine the same. It was held that, though nothing was said about costs, full compensation naturally included the costs of applying to the justices (*Huddersfield Corporation v. Shaw* (1890), 54 J. P. 724).

BYELAWS.

* * * * *

183. Any local authority may, by any byelaws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence (a) a further penalty not exceeding forty shillings for each day after written notice of the offence from the local authority; but all such byelaws imposing any penalty

Power to
impose
penalties on
breach of
byelaws.

Section 183. *shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty (b).*

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any byelaw made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

This and the three following sections have been applied to byelaws made by a parish council under s. 8 (1) (d) of the L. G. A., 1894, *post*, p. 4896.

The section is, however, repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith. For general notes, see *ante*, pp. 1113—15.

(a) See note (b) on p. 1115, *ante*.

(b) The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273.

Confirmation
of byelaws.

184. Byelaws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board . . . (a).

This section has been repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith. As to confirmation of byelaws, see L. G. A., 1933, s. 250, *ante*, p. 1104.

For Local Government Board now read Minister of Health.

(a) The residue of this section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273.

* * * * *

As to
regulations
of local
authority.

188. The provisions of this Act relating to byelaws shall not apply to any regulations which a local authority is by this Act authorised to make; nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

This section has been repealed by the P. H. A., 1936, s. 346 (1), Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith. Regulations are not now made under any of the sections of this Act, but are under some of the amending Acts, *e.g.*, the P. H. A., 1890, s. 40, etc., *post*, p. 4815. Some regulations, however, require the approval of the M. of H. The Departmental Committee on Building Byelaws (see "Local Government, 1917-1918," p. 155), recommended that regulations as distinct from byelaws should be abolished in matters within their terms of reference.

* * * * *

PART VI.

RATING AND BORROWING POWERS, ETC.

* * * * *

Private Improvement Rate (a).

Power to
make private
improvement
rates.

213. Whenever an urban authority (b) have incurred (c) or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses, such authority may, if they think fit, make and levy on the occupier of the premises in respect

of which the expenses have been incurred (*d*), in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum (*dd*) per annum, in such period not exceeding thirty years as the urban authority may in each case determine (*e*).

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner (*f*) for the time being of the premises so long as the same continue to be unoccupied.

This section is repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(*a*) The sections under which expenses may be declared to be private improvement expenses are s. 150 of this Act, some sections of the P. H. A., 1890, and the Private Street Works Act, 1892, s. 12. See s. 240, *post*, p. 4478, as to rent-charges in respect of advances made for private improvements.

What expenses included.

A rate made under the text is not a rate from which "agricultural land and buildings" are exempted by s. 67 of the L. G. A., 1929, *post* since it is not a rate within the definition in s. 68 of the R. and V. A., 1925, *ante*, p. 2229.

(*b*) Section 232, *post*, p. 4477, provides for private improvement rates by a rural authority.

(*c*) Apparently the authority must either pay the expenses out of the funds raised by the general rates (as to which see the R. and V. A., 1925, *ante*, p. 2113), or borrow the sum required under Pt. IX. of the L. G. A., 1933, *ante*, p. 1023. See notes to s. 150, *ante*, p. 4389, as to the practice of the M. of H. in regard to borrowing for such purposes. See also s. 240, *post*, p. 4478, which provides a mode of securing repayment to the lender by means of a rent-charge to issue out of the premises.

How expenses to be paid in first instance.

(*d*) These words seem to imply that the expenses in question have been ascertained in respect of each separate premises as by apportionment. See the note on the subject, *ante*, p. 4417.

Expenses must be ascertained.

(*dd*) The rate of interest payable under this section is to be 5 per cent. or such other rate as the Minister may from time to time by order fix (s. 77, P. H. A., 1925, Vol. V., *post*). As from April 1st, 1934, the rate of interest was fixed at 4 per cent. (see M. of H. (Rate of Interest on Private Improvement Expenses) Order, 1934 (S. R. & O., 1934, No. 274).

(*e*) See, however, the appeal to the L. G. B. given in s. 268, *post*, p. 4495.

Appeal.

(*f*) See note (*i*) to s. 346 (1) of the P. H. A., 1936, *ante*, pp. 721 *et seq.*

214. Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rack-rent (*a*), he shall be entitled (*b*) to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rack-rent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rack-rent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum

Proportion of private improvement rate may be deducted from rent.

Section 214. deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof (c).

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him (d).

This section is repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

Rack-rent.

(a) See the definition in s. 4, *ante*, p. 4335.

Extent of right to deduct.

(b) As to the extent of the right to deduct, see note on pp. 722, 723, *ante*.

Mesne landlord.

(c) See the definition of "owner" in s. 4, *ante*, p. 4335. Thus, the rent received by the owner being £100, and the rent paid by him being £20, if the sum deducted by the tenant be £10, the landlord may deduct £2 from the rent paid to the owner in fee.

(d) This might possibly occur if a person who held lands at a certain rent were to grant an underlease at a lower rent for a heavy fine or other consideration.

Redemption of private improvement rates.

215. At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made (a), or such part thereof as may not have been defrayed by sums already levied in respect of the same :

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise (b).

This section is repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) These words appear to assume that the amount of the expenses has already been ascertained, e.g., by apportionment. See the note on this subject, *ante*, p. 4417.

(b) *Quære*, what is to be done with the payment if no further works of private improvement are required, and no money has been borrowed, or if the loan has been discharged ?

* * * * *

General Provisions as to Urban Rates.

Estimate to be prepared before making rates.

218. Every urban authority, before proceeding to make a *general district rate* or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing—

The several sums required for each of such purposes ; and

The rateable value of the property assessable ; and

The amount of rate which for those purposes it is necessary to make on each pound of such value ;

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same. Section 218.

The words in italics were repealed by s. 69, and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265, as from the date of the first new valuation (R. and V. A. (Repeals, etc.) Order, 1927). The section became therefore operative only as regards private improvement rates. It is now repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

Under the R. and V. A., 1925, a duty is cast upon the rating authority to make such rates as will be sufficient to meet the total estimated expenditure for the period of the rate (s. 12, *ibid.*, *ante*, p. 2151).

A private improvement rate is unlike other rates in that it is not a rate of a certain amount in the pound levied equally upon the rateable value of all premises liable to the rate. Before a private improvement rate can be levied the amount payable in respect of each of the premises to be charged must be ascertained and the amount of the rate leviable in respect of each of these premises will be such amount as will be sufficient to discharge such expenses, together with interest in such period not exceeding thirty years as the authority determines (s. 213, *ante*, p. 4468). Moreover, any owner or occupier of premises chargeable may redeem the rate at any time by paying the amount remaining due in respect of the premises (s. 215, *ante*, p. 4470). It is therefore unnecessary for the purpose of levying the rate to consider the rateable value of the premises or the amount in the pound of the rate which may vary as to every one of the separate premises charged. In the case of agricultural lands and buildings which have no rateable value, and in valuation lists subsequent to the first will not be mentioned (s. 67, L. G. A., 1929, *post*), but which will still be liable to private improvement rates since they are not included in the definition of "rates" in s. 68, R. and V. A., 1925, *ante*, p. 2229, it is difficult to see how a local authority can comply with the provisions of this section.

It is submitted that since the section now only applies to private improvement rates, the section will be sufficiently complied with by inserting in the estimate those particulars which will enable the persons liable to ascertain the extent and basis of their liability, viz. the premises in respect of which the rate is levied, the total amount payable in respect of each of those premises, and the amount to be assessed upon each of those premises for each period of the rate. It would be desirable that the estimate should also recite the authority under which the expenses were incurred and the resolution of the authority to demand payment by way of a private improvement rate.

The section expressly provides that the estimate shall not affect the validity of the rate.

The proper mode of carrying this provision into effect appears to be to enter the estimate in a page of the book preceding the rate.

Though the estimate will not affect its validity, it must not be considered that a rate will be valid if made for purposes which are illegal, and which may be shown in the estimate. See *Smith v. Southampton Corporation*, [1902] 2 K. B. 244; 67 J. P. 5; 33 Digest 88, 580.

See *R. v. Marris* and other cases cited *ante*, at p. 2154.

219. Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate (a) made previously thereto, and may take copies of or extracts therefrom without fee or reward; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds (b). Rates to be open to inspection.

**Note to
Section 219.**

This section was repealed except in so far as it relates to private improvement rates (s. 69, and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265), as from April 1st, 1927 (the R. and V. A. (Repeals, etc.) Order, 1927) and, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith, by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728. As to the inspection of rate books under the R. and V. A., 1925, see s. 60, *ibid.*, *ante*, p. 2220.

(a) This is an additional inspection to that provided for in the preceding section. On this occasion copies or extracts may be taken, but no such provision is made in respect of the previous inspection. Moreover, refusal of inspection in this case, subjects the officer to a penalty recoverable on summary conviction. No such summary remedy is given in the previous case. *Cf. Davies v. Gas Light and Coke Co.*, [1909] 1 Ch. 708; 13 Digest 304, 364, as to a shareholder's statutory right to copies of certain books of a company.

(b) See s. 251, *post*, p. 4481, as to the recovery of this penalty.

**Description
of owner or
occupier in
rates.**

220. Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description.

This section was repealed except in so far as it relates to private improvement rates by s. 69 and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265, as from April 1st, 1927 (the R. and V. A. (Repeals, etc.) Order, 1927) and, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith, by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728.

It is most desirable that the utmost pains should be taken to ascertain the respective names of the owner or occupier. Much practical difficulty attends all proceedings when the name of the party proceeded against is not stated. Moreover, if it can be shown that the name was known to the authority, it may perhaps be held that the use of the term *owner* or *occupier* is not justified. Again, it may well be questioned whether, although these words are used, the assessment will be available against an owner or occupier who may succeed to the premises. See notes to P. H. A., 1936, s. 285, *ante*, p. 577.

**Rates may be
amended.**

221. An urban authority may from time to time amend any rate made in pursuance of this Act by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed (a), or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated (b), or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made (c), and with respect to him an amended rate shall be considered to have been made at the time when he first received notice (d) of the amendment; and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment,

or whose name is thereby newly inserted until seven days (e) after such **Section 221.** notice has been given to him. —

This section was repealed except in so far as it relates to private improvement rates by s. 69, and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265, as from the date of the first new valuation (the R. and V. A. (Repeals, etc.) Order, 1927) and, except so far as may be material for the purposes of any unrepealed enactment in this Act or in any Act directed to be construed herewith, by s. 346, and Sched. III., Pt. I. (2), of the P. H. A., 1936, *ante*, pp. 720, 729.

As to the amendment of rates under the R. and V. A., 1925, see s. 5, *ibid.*, *ante*, p. 2128, as amended by s. 4 (1) of the R. and V. A., 1928, *ante*, p. 2269.

(a) *E.g.* where there has been a change of occupation or ownership.

(b) An under-rating or over-rating may arise out of an error in computation.

(c) See s. 269, *post*, p. 4499. Doubtless a ratepayer may appeal against the reduction of another person's rate on this amendment, if he can find it out.

(d) As to the authentication and service of this notice, see ss. 266, 267, *post*, pp. 4494, 4495.

(e) The days will be one inclusive and one exclusive.

222. All rates made or collected under this Act shall be published in the same manner as poor rates (a), and shall commence and be payable at such time or times (b), and shall be made in such manner and form (c), and be collected by such persons, and either together or separately, or with any other rate (d) or tax, as the urban authority may from time to time appoint: Provided that no publication shall be required of any private improvement rate (e). Publication and collection of rates.

This section was repealed except in so far as it relates to private improvement rates by s. 69 and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265, as from April 1st, 1927 (the R. and V. A. (Repeals, etc.) Order, 1927) and, except so far as may be material for the purposes of any unrepealed enactment in this Act or in any enactment directed to be construed herewith, by s. 346 and Sched. III., Pt. I. (2), of the P. H. A., 1936, *ante*, pp. 720, 728.

(a) The provision as to publication does not apply to private improvement rates, Publication. see the proviso to the section.

(b) This enables the authority to make a rate payable by instalments. Instalments.

If the council wish that the rate should be collected by instalments, they should give formal directions under s. 222 to that effect and fix the times of payment of the instalments. It is not clear that where a rate is not duly made payable by instalments, the council may in any case in which part payment of a rate is tendered allow the payment of an instalment to be accepted, but there would seem to be no practical objection. The council, of course, would be responsible for securing that the due collection of the rate was not prejudiced by any arrangements made.

If no time is fixed by the authority under the section as the date at which such a rate is payable, it would seem that the rate is payable on demand. See also s. 256, *post*, p. 4484.

As regards a water rate, reference must be made to the Waterworks Clauses Act, 1847, s. 70, *ante*, p. 4198, which prescribes payment at the usual quarter days.

(c) Though the form may be prescribed by the authority, it is submitted that **Form.** this provision does not authorise the omission of any material part such as the usual heading, as to which see *R. v. Wilkinson* (1886), 2 T. L. R. 869.

(d) The private improvement rate will usually be collected with the general rate.

As to recovery of rates generally, see s. 256, *post*, p. 4484.

(e) See s. 213, *ante*, p. 4468. This rate is merely a reimbursement of expenses incurred for the benefit of a property owner of which he has had ample notice.

223. The production of the books purporting to contain any rate or **Evidence** assessment made under this Act shall, without any other evidence of rates.

Section 223. whatever, be received as *prima facie* evidence of the making and validity of the rates mentioned therein.

This section was repealed except in so far as it relates to private improvement rates by s. 60 and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265, as from date of the first new valuation (The R. and V. A. (Repeals, etc.) Order, 1927) and, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith, by the P. H. A., 1936, s. 346 and Sched. III., Pt. I. (2), *ante*, pp. 720, 728.

Section 262, *post*, p. 4492, provides that no rate shall be vacated for want of form; but if the rate show on the face of it that it is defective in substance (as if there be no estimate, or if it appear to be made for illegal purposes), it is presumed that the objection may nevertheless be taken to it with success. Hence, it is incumbent upon authorities to prepare rates with proper attention and care. The text only makes the production *prima facie* evidence of the rate's validity.

* * * * *

Power to
reduce or
remit rates.

225. An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

This section was repealed except in so far as it relates to private improvement rates by s. 69 and Sched. VIII. of the R. and V. A., 1925, *ante*, pp. 2233, 2265, as from date of the first new valuation (The R. and V. A. (Repeals, etc.) Order, 1927) and, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith, by the P. H. A., 1936, s. 346 and Sched. III., Pt. I. (2), *ante*, pp. 720, 728.

A similar power in relation to general and special rates is given by s. 2 (4) of the R. and V. A., 1925, *ante*, p. 2121.

Saving for
existing
agreements

226. Nothing in this part of this Act shall alter or affect any lease contract or agreement made or entered into between the landlord and tenant of any premises.

This section was repealed by the P. H. A., 1936, s. 346 and Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

Covenants
to pay
rates.

A person who agrees to take a lease at a "net annual rent of £—," cannot object that the lease contains a covenant for him to pay the sewers rates (*Bennett v. Womack* (1828), 7 B. & C. 627; 31 Digest 116, 2493).

By an agreement marsh lands were demised subject to a condition that the tenant should pay all outgoings, rates, taxes, costs, etc., whether parochial or parliamentary, which were and might be chargeable on the lands. An assessment was made by commissioners of sewers for the permanent benefit of the lands, in certain proportions upon the owners and occupiers. For four years the tenant paid in the first instance both his own share and that of his landlord, and upon each half-year's settlement of account with the landlord's agent, who was ignorant of the terms of the agreement, the sum so paid was allowed towards the rent, and receipts were given for the balance:—*Held*, in an action brought upon the agreement to recover the sums so allowed as arrears of rent, that the facts supported a plea of payment of the rent (*Waller v. Andrews* (1838), 3 M. & W. 312; 2 J. P. 84; 31 Digest 304, 4484). If a tenant voluntarily pays taxes which he alleges ought to have been paid by the landlord and afterwards pays rent without deduction, he cannot recover the amount against the landlord (*Saunderson v. Hanson* (1828), 3 C. & P. 314; 31 Digest 293, 4392; and see *Andrew v. Hancock* (1819), 1 Brod. & Bing. 37; 3 Moore, C. P. 278; 31 Digest 293, 4390; *Fuller v. Abbott* (1811), 4 Taunt. 105; 31 Digest 298, 4430, and cases collected in note *ante*, p. 723). To entitle a tenant to deduct from his rent a payment which he is entitled to deduct under a statute, the money must have been actually paid (*Ryan v. Thompson* (1868), L. R. 3 C. P. 144; 32 J. P. 135; 31 Digest 306, 4506). In *Reigate Corporation v. Wilkinson* (1919), 84 J. P. 17; 18 L. G. R. 353; 38 Digest

633, 1524, the tenants had paid the rates to the landlord as part of the rent, and the landlord had requested the authority to send the claims for the rates to him, but the authority had not exercised their option under s. 211 (1) (a) (now repealed, but see s. 11 of the R. and V. A., 1925, *ante*, p. 2142), to charge the owner direct. It was held that the defendant was liable, as by the correspondence he had agreed to discharge the rates if the authority withheld application to the tenants.

**Note to
Section 226.**

As to the rating of mines, and the right to deduct one-half of the rates under the Rating Act, 1874, s. 8 (14 Halsbury's Statutes 589), see *Devonshire (Duke of) v. Barrow Haematite Steel Co.* (1877), 2 Q. B. D. 286; 38 Digest 477, 365; *Chaloner v. Bolckow* (1878), 3 App. Cas. 933; 42 J. P. 756; 38 Digest 477, 366.

A. demised land to B. upon a building lease, at a yearly rent of £60 clear of all rates and assessments, sewers rates and land tax excepted, with the usual covenant for payment of rent. B. by building on the land increased its rateable value to £300 per annum:—*Held*, that he was only entitled to deduct the sewers rate and land tax upon the original rent, and not upon the improved value (*Smith v. Humble* (1854), 15 C. B. 321; 18 J. P. 760; 31 Digest 296, 4413; and see *Watson v. Atkins* (1820), 3 B. & Ald. 647; 31 Digest 296, 4411; *Graham v. Wade* (1812), 16 East, 29; 31 Digest 296, 4410; *Watson v. Home* (1827), 7 B. & C. 285; 31 Digest 296, 4412). *Watson v. Home*, and *Smith v. Humble*, *supra*, were followed by the Court of Appeal in *Mansfield v. Relf*, [1908] 1 K. B. 71; 71 J. P. 556; 31 Digest 296, 4414. See all these three cases distinguished in *Salaman v. Holford*, [1909] 2 Ch. 602; 31 Digest 296, 4415. When a lessee covenanted that he would pay all taxes, charges, rates, tithes, etc., which then were or should at any time thereafter during that demise be taxed, charged, assessed, or imposed upon the said demised premises:—*Held*, that the covenant was not confined to rates payable by the landlord, but meant all rates then imposed on the lessee in respect of his occupation, and all future rates which might be imposed on the land itself (*Hurst v. Hurst* (1849), 4 Exch. 571; 31 Digest 294, 4398); and as to inhabited house duty, see *Eastwood v. McNab*, [1914] 2 K. B. 361; 31 Digest 298, 4426.

A landlord, liable with others to repair a bridge *ratione tenuræ*, demised the land, and the lessee covenanted to pay the rent, clear of land tax and all other to bridge taxes and deductions whatsoever, either parliamentary or parochial, taxed or repairs imposed, or to be taxed or imposed, upon the premises, or upon the lessor in respect thereof, property tax excepted. By statute, reciting the liability *ratione tenuræ* and that part of the bridge was out of repair, it was enacted that the landowners liable as above should repair such part during the continuance of the Act; and on their default road trustees were empowered to do the repairs and recover against the owners. A power of distress under a justices' warrant was given to enforce payment, and for raising the sums required power was given to the landowners to call meetings, and to make rates according to the value of the chargeable lands, such rates to be levied, if necessary, by distress. A subsequent Act, also reciting the liability, made further provision as to holding meetings, and levying rates:—*Held*, that the original liability for contribution to repairs did not, by these enactments, become a parliamentary tax or deduction within the lessee's covenant, and, therefore (the court finding no clause in the statutes which extended the ultimate liability to lessees and occupiers as well as owners) that the lessee having been compelled, in the lessor's default, to pay a rate made as above and charged upon him as lessee and occupier, might recover the amount from the lessor (*Baker v. Greenhill* (1842), 3 Q. B. 148; 11 L. J. Q. B. 161; 31 Digest 295, 4407).

A sewer rate is not a "parliamentary tax" within the meaning of a covenant to pay such taxes (*Brewster v. Kitchel* (1697), 2 Salk. 615; 31 Digest 297, 4421; *Palmer v. Earith* (1845), 14 M. & W. 428; 9 J. P. 842; 31 Digest 295, 4408). See also *Earl of Cork v. Cork C. C.*, [1903] 2 I. R. 490. Sewer rate.

A tenant from year to year agreed to pay all outgoing. In the course of the Drainage tenancy a new drainage rate was imposed by a local Act, to be paid by the tenant, rate under who might deduct it from the rent in the absence of any agreement to the contrary. local Act. It was held that the tenant could deduct it, for his agreement did not apply to such new rate, but that the current rate could only be deducted from the current rent, and past payments could not be deducted (*Vestry of Mile End Old Town v. Whitty* (1898), 78 L. T. 80; 31 Digest 304, 4482).

**Note to
Section 226.**

Water rate.

In a lease of a shop, basement and three rooms on the third floor of a house, the lessor covenanted to pay "all rates and taxes chargeable in respect of the demised premises." Water was supplied separately by a water company to the shop and basement, and was paid for by the tenant. It was held that he was entitled to recover from the lessor the sum so paid, as being a "rate" within the meaning of the covenant (*Spanish Telegraph Co., Ltd. v. Shepherd* (1884), 13 Q. B. D. 202; 48 J. P. 440; 31 Digest 295, 4402). This decision was discussed in *Badcock v. Hunt* (1888), 22 Q. B. D. 145; 53 J. P. 340; 31 Digest 303, 4470, where, by a covenant in a lease of a warehouse, the lessor covenanted to pay all rates, taxes, and impositions whatsoever, whether parliamentary, parochial, or imposed by the corporation of London, or otherwise howsoever, which then were or thereafter might be rated, charged, or assessed on the said premises, or any part thereof, or on the said yearly rent, or on the landlord, owner, or tenants of the said premises in respect thereof. Water having been supplied to the premises for domestic purposes by the New River Company under the Waterworks Clauses Act, 1847, *ante*, p. 4176, the lessees paid the water rates due therefor and sought to recover them from the lessor:—*Held*, that such water rates were not rates or impositions imposed on or in respect of the premises within the meaning of the covenant, and that the lessees were not entitled to recover the same from the lessor. It was again discussed, and followed with reluctance by BUCKLEY, J., in a case where in a lease of the whole of the basement and a portion of the ground floor of a block of buildings, the lessors covenanted to pay "all rates and taxes payable in respect of the said demised premises," and water was supplied for domestic purposes by a water board to the whole block by a common pipe (see *Bourn and Tant v. Salmon and Gluckstein, Ltd.* (1906), 70 J. P. 462, affirmed on appeal ([1907] 1 Ch. 616; 71 J. P. 329; 31 Digest 295, 4404) on the ground of the particular circumstances of the case, and on the ground that the case was indistinguishable from *Spanish Telegraph Co., Ltd. v. Shepherd, supra*). In *Elliott v. Russell*, [1902] 2 K. B. 748; 67 J. P. 158; 43 Digest 1065, 52, a Divisional Court held that a rent for water supplied under agreement made under s. 56 (13 Halsbury's Statutes 649) (now replaced by s. 126 of the P. H. A., 1936, *ante*, p. 377), was a "rate made under this Act" within the meaning of s. 256, *post*, p. 4484. In *Northampton Corporation v. Ellen*, [1904] 1 K. B. 299; 68 J. P. 197; 43 Digest 1091, 227, the Court of Appeal held that a water rate was not a "rate" within the meaning of an order extending the boundaries of the borough, Article 36 whereof provided that the general district rate to be levied in the added part should not in any one year during a period of ten years exceed such an amount in the pound as, "when added to the poor rate and to the borough rate and any other rate made by the corporation" in the same year, would make up a total rate of 5s. 6d. in the pound.

Cost of water
for trade
purposes.

Under a covenant by a lessor to pay all water rates imposed or assessed upon the premises or on the lessor or lessee in respect thereof, the lessor is not bound to pay for water supplied to the lessee for trade purposes (*Re Floyd, Floyd v. Lyons & Co.*, [1897] 1 Ch. 633; 31 Digest 297, 4417); so too a lessor's covenant in the case of a lock-up shop to pay all rates and taxes except gas and electric light was held to include water rate for water supplied for domestic purposes, but not the rate for water supplied for trade purposes (*Drieselman v. Winstanley* (1909), 53 Sol. J. 631; 31 Digest 295, 4405).

* * * * *

Quota of
rates to be
paid by the
universities,
etc.

228. Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching repairing lighting and cleansing, under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to

which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act (a). Section 228.

All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities halls and colleges in the same manner in all respects as rates contributions and sums of money may now be recovered from them by virtue of any such local Act.

(a) See s. 179, *ante*, p. 4461. The Commissioners of Oxford and Cambridge have now been superseded by the respective corporations.

EXPENSES OF RURAL AUTHORITY.

* * * * *

232. Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority. As to private improvement expenses.

This section is repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

See ss. 213–215, *ante*, pp. 4468–70. And see also the last paragraph of s. 234, *infra*. A private improvement rate is not a rate in respect of which “agricultural land and buildings” are exempted by s. 67 of L. G. A., 1929; Vol. V. and 10 Halsbury’s Statutes 927, since it is not a “rate” within the definition in s. 68 of the R. and V. A., 1925, *ante*, p. 2229.

BORROWING POWERS.

* * * * *

234. . . .

Where any urban authority borrow any money for the purpose of defraying private improvement expenses (a), or expenses in respect of which they have determined a part only of the district to be liable (b) it shall be the duty of such authority, as between the ratepayers of the district, to make good, so far as they can (c), the money so borrowed, as occasion requires, either out of private improvement rates, or out of a rate levied in such part of the district as aforesaid. Regulations as to exercise of borrowing powers.

The earlier part of this section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273; and the whole section was repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) See s. 213, *ante*, p. 4468. The text appears to assume that the authority will borrow money and charge it upon their general rate, though it is only required for special application, and this practice is in fact common. Most loans raised for private improvements are in respect of the making up of new streets. The Ministry now expenses.

Note to Section 234. allow a term of ten years for repayment if desired on the understanding that a similar period is allowed to frontagers for repayment of the cost.

(b) See s. 11 (2) of the P. H. A., 1936, *ante*, p. 16.

(c) This is an indefinite provision. It is doubtful whether any legal obligation can arise out of it.

* * * * *

Rent-charge
may be
granted in
respect of
advances
made for
private im-
provements.

240. Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be private improvement expenses (a), the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in Schedule IV. to this Act (b) to such person of a yearly rent-charge issuable out of the premises (c), in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rent-charge shall be personal estate (d), and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding thirty years (e), in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates (f), and with respect to redemption of private improvement rates (g), shall, *mutatis mutandis*, apply to rent-charges granted under this section.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) See s. 213, *ante*, p. 4468.

See note as to rent-charges, *ante*, p. 613.

A similar provision to this section is contained in the Housing Act, 1936, s. 20, *ante*, p. 1622.

(b) See Sched. IV., Form K., *post*, p. 4525. It is not now free from stamp duty; see P. H. A., 1848, s. 151; P. H. A., 1872, s. 42.

(c) See note as to "Premises" in P. H. A., 1936, s. 295, *ante*, p. 614.

(d) This provision affects the devolution of the property in the case of intestacy. See the observations of the judges in *Bligh v. Brent* (1837), 2 Y. & C. Ex. 268; *per* WOOD, V.-C., in *Hayter v. Tucker* (1858), 4 Kay & J., at p. 248; 23 J. P., at p. 20; *Thompson v. Thompson* (1844), 1 Coll. 381; *Robinson v. Addison* (1840), 2 Beav. 515. See also the cases referred to in the notes to s. 310 of the P. H. A., 1936, *ante*, p. 658.

(e) It is somewhat uncertain when the rent is to commence, and the form in the schedule does not help further than to determine when the first payment shall be made.

(f) See s. 214, *ante*, p. 4469.

(g) See s. 215, *ante*, p. 4470.

Rent-charges
to be
registered.

241. Rent-charges issued in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

**Note to
Section 241.**

See s. 207 (2) of the L. G. A., 1933, *ante*, p. 1042, as to the default of registration with reference to other charges, and see *In re Wynn Hall Coal Co.* (1870), L. R. 10 Eq. 515; 10 Digest 946, 6479. See, however, the provisions of the Land Charges Act, 1925, referred to in note on p. 613, *ante*.

242. The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security.

Power of
Public Works
Loan Com-
missioners to
lend to local
authority.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

This section appears to contain a general power to the commissioners to lend money at such rate of interest as appears to them to be satisfactory. The next section enables them to do so at a specific low rate of interest, but under certain restrictions.

The statutes which now govern the advances by the commissioners are mentioned in note to L. G. A., 1933, s. 195, *ante*, p. 1024, and are (except in so far as they are repealed or relate only to local matters) set out herein. Attention may be particularly directed to the Public Works Loans Act, 1875, s. 50, *ante*, p. 4558, under which loans granted under the Public Health Acts are to be deemed loans under the Public Works Loans Acts.

As to the application of balances of loans advanced by the commissioners to purposes other than those originally intended, see the Public Works Loans Act, 1881, s. 9, *post*, p. 4621. It is the practice of the M. of H., when the final payments have been made by a local authority out of a loan advanced by the commissioners and any balance remains, to request that such balance should, in accordance with the provisions of the Public Works Loans Act, 1878, s. 4, *post*, p. 4602, be remitted as soon as practicable to the commissioners to be applied by them to the reduction of the debt.

243. The Public Works Loan Commissioners may, on the application of any local authority and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act (a), whether for works already executed (b) or yet to be executed, on the security of any fund or rate (c) applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest . . . (d) :

Power of
Public Works
Loan Com-
missioners to
lend to local
authority on
recommendation
of Local
Government
Board.

Provided—

(1) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required (e) :

(2) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872 (f).

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred

Section 243. by the Sanitary Acts, the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum (g).

This section is repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith.

This section was largely affected by the Public Works Loans Act, 1898 (12 Halsbury's Statutes 299). In a Circular dated October 15th, 1898, explanatory of the Act, the Local Government Board stated as follows:—Section 11 of the Public Works Loans Act, 1875, *post*, p. 4548, provided that every loan granted by the Public Works Loan Commissioners under that Act should be repaid within a period from the date of the actual advance of such loan not exceeding the period authorised by the special Act relating to the loan, or, if no period was so authorised, not exceeding twenty years. In the latter case, however, the Treasury might, on the recommendation of the commissioners, stating special circumstances, extend the period of repayment. By s. 5 of the Public Works Loans Act, 1898 (*op. cit.*), *thirty* years are substituted for twenty in s. 11 of the Act of 1875. Hence, in the case of any sum borrowed by the council from the Public Works Loan Commissioners, the commissioners will be able to lend the money for a period not exceeding *thirty* years without any action on the part of the Treasury. No recommendation from the Board will be required in any such case; but a recommendation from them under s. 243 of the P. H. A., 1875, will still be necessary where the council propose to borrow from the commissioners for a longer period than thirty years for works executed under the Public Health Acts. Hence a recommendation from the Board will always be requisite, if the council purpose to borrow from the commissioners for these purposes, whatever may be the period within which the loan is to be repaid.

With reference to the italicised words of the circular, *supra*, note that the limit of "thirty years" has been extended to "fifty years" by the Public Works Loans Act, 1911, s. 4, *post*, p. 5119. It is understood that the commissioners are unwilling to lend money for the repayment of an existing loan.

The maximum fees chargeable by the Commissioners are fixed by Regulations under s. 41 of the Public Works Loans Act, 1875, *post*, p. 4557, the last issued being those dated August 30th, 1926, set out *ante*, p. 3189.

See notes to previous section as to the application of money derived from the Commissioners to purposes other than those originally proposed.

Local Act
loans.

(a) Note that this section does not apply to loans which are authorised by a local Act, though for purposes such as would be provided for by this Act. But the Public Works Loans Act, 1896, s. 2, *post*, p. 4940, enacts that there shall be added to the works for the purpose of which the Public Works Loan Commissioners may lend in Great Britain under the Public Works Loans Act, 1875, *post*, p. 4544, the following works, namely (*inter alia*), any work for which the council of a county, borough, district, or parish are authorised to borrow.

(b) These words are evidently used with reference not to the date of this Act, but to the time when the loan is applied for.

(c) The fund and rate here referred to are the general rate fund and general rate of the authority, and the special rate in the case of a rural authority. See also the next section.

Rate of
interest.

(d) The provision which here followed as to the rate of interest was repealed by the Public Works Loans Act, 1897, s. 12 (4), *post*, p. 4943. The rates of interest vary from time to time, and are fixed by notices issued from the Treasury (see p. 3189, *ante*).

Period of
repayment.

(e) See note (i) to L. G. A., 1933, s. 195, *ante*, p. 1030, and note (c) to *ibid.*, s. 198, *ante*, p. 1033, as to terms allowed for loans.

Default
expenses.

(f) It was not the practice of the L. G. B., nor is it of the M. of H., to undertake works in default of a local authority. The alternative procedure prescribed by s. 299, *post*, p. 4508, was adopted. But that section has now been repealed in so far as it applies to district councils and the procedure applicable in the case of defaulting district councils is now contained in s. 57 (3), L. G. A., 1929 (*q.v.* with notes thereto *post*, Vol. V.).

(g) The Public Works Loans Act, 1875, s. 33, *post*, p. 4541, provided that every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of that Act) or under the security for such loan, should be compounded for or released only under the authority of Parliament in each case. The amending Act of the following year, Public Works Loans (Money) Act, 1876, s. 6, *post*, p. 4562, after reciting that doubts had arisen whether the said enactment would prevent the reduction of interest in accordance with s. 243 of the P. H. A., 1875, provided that the commissioners might, on or before July 31st, 1876, if they thought it expedient, with the consent of the Treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than four per centum per annum: Provided always, that nothing in the Public Works Loans Act, 1875, should be deemed to take away or abridge the power of the commissioners under s. 243 of the P. H. A., 1875, to reduce, if they thought fit, any interest payable on any such loan to a local authority as in that section mentioned.

The Public Works Loans Act, 1875, s. 36, *post*, p. 4556, required the L. G. B. to satisfy themselves that the money advanced by the commissioners is duly applied to the purpose of the loans—a duty now performed by the M. of H. *Ibid.*, s. 37, *post*, p. 4556, empowers the Treasury to postpone for periods, not exceeding five years, the payment of the instalments of principal and interest, due on loans from the Public Works Loan Commissioners. See also s. 4 of the Local Authorities (Financial Provisions) Act, 1921 (11 Halsbury's Statutes 1345), as to the postponement for a maximum period of five years of the annual provision for repayment of loans on revenue-producing undertakings.

* * * * *

PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, etc.

251. All offences under this Act, and all penalties forfeitures costs and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for (a), may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts before a court of summary jurisdiction (b). The court of summary jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions (c), or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice (d).

Summary proceedings for offences, penalties, etc.

This section is repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or in any Act directed to be construed herewith.

(a) See L. G. A., 1933, s. 120 (3), *ante*, p. 908, as to proceedings against officers in default, and s. 256, *post*, p. 4484, as to the recovery of rates made under this Act, i.e., private improvement rates. As to the recovery of general rates, see R. and V. A., 1925, s. 2 (3), *ante*, p. 2119, and notes thereto.

**Note to
Section 251.**

No action
for money
recoverable
summarily.

A local authority sued ratepayers for services rendered by a fire brigade on two days. On the first day the brigade were employed in pumping water to prevent a fire. On the second day certain men of the brigade were retained, at the defendants' request, to be on hand during the removal of debris, but it was found as a fact that there was very small, if any, risk of fire breaking out on this day. It was held that the defendants were bound to pay for the employment of the men on the second day, and that the sum due was not a "cost or expense under this Act" but was recoverable by action (*Grays U. D. C. v. Grays Chemical Works, Ltd.*, [1918] 2 K. B. 461; 82 J. P. 207; 38 Digest 226, 575).

(b) See the definition of those terms in s. 4, *ante*, p. 4345. The Summary Jurisdiction Acts are dealt with in detail in the notes to s. 296 of P. H. A., 1936, *ante*, pp. 614-621.

As the statute has provided this summary remedy for the recovery of the sums adjudged and penalties, an action for such sums and penalties will not be maintainable. See *St. Pancras (Vestry of) v. Batterbury* (1857), 2 C. B. (N. S.) 477; 21 J. P. 424; 26 Digest 499, 2071; *Blackburn Corporation v. Parkinson* (1858), 23 J. P. 262; 28 L. J. M. C. 7; 26 Digest 551, 2477; *Lamplugh v. Norton* (1889), 22 Q. B. D. 452; 53 J. P. 389; 42 Digest 615, 148; *G. W. Rail. Co. v. Sharman* (1892), 61 L. J. Q. B. 600; 40 W. R. 643; 42 Digest 749, 1731. In the first of these cases it was laid down that when a pecuniary obligation is created by a statute, and a remedy expressly given for enforcing it, that remedy must be adopted. There is no right to come into the High Court for a declaration that the applicant has a right to recover in a court of summary jurisdiction; he can only proceed in the latter court (*Barraclough v. Brown*, [1897] A. C. 615; 62 J. P. 275; 42 Digest 748, 1726). Compare, however, *Barwick v. S. E. and Chatham Rail. Co.*, [1921] 1 K. B. 187; 85 J. P. 65; 44 Digest 70, 509, where it was held that in very special circumstances a declaration may be made, and see *Simmonds v. Newport Abercarn Black Vein Steam Coal Co.*, [1921] 1 K. B. 616; 85 J. P. 109; 30 Digest 149, 228. In some cases the remedy in the civil courts is expressly reserved; for example, s. 261, *post*, p. 4491, gives an alternative remedy in the county courts for demands under £50; and on the application of the Attorney-General the court has jurisdiction to grant an injunction as an additional or alternative remedy (*Att.-Gen. v. Sharp*, [1931] 1 Ch. 121; 94 J. P. 234; Digest Supp.; *Att.-Gen. v. Premier Line, Ltd.*, [1932] 1 Ch. 303; Digest Supp.).

It may here be mentioned that any information, complaint, warrant, or summons issued for the purpose of the Public Health Acts may contain in the body thereof or in a schedule thereto several sums (*cf.* P. H. A. Amendment Act, 1890, s. 8, *post*, p. 4805). See also *R. v. Glover, Ex parte Hornsey U. D. C.* (1900), 35 L. J. News, 269.

Under the Revenue Act, 1898, s. 8 (16 Halsbury's Statutes 706), receipts given by or on behalf of a clerk to justices or a magistrate for money received in respect of a fine need not be stamped.

(c) Consequently the court will be a petty sessional court, as defined by the S. J. A., 1879, s. 20 (11 Halsbury's Statutes 331). The same section requires the justices to sit in open court.

(d) These words include stipendiary magistrates, who are empowered by statute to do alone whatever is authorised by the Summary Jurisdiction Acts to be done by one or more justices. See Summary Jurisdiction Act, 1848, s. 33 (*op. cit.* 290); Stipendiary Magistrates Act, 1858 (*op. cit.* 304); Stipendiary Magistrates Act, 1869 (*op. cit.* 316).

As to jurisdiction of a county justice, see note, *ante*, p. 615.

* * * * *

Restriction
on recovery
of penalties.

253. Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided (a), be had or taken by any person other than by a party aggrieved (b), or by the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General (c): Provided, that such consent shall not be required to proceedings which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house building manufactory or place situated without their district (d).

This section was repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith. **Note to Section 253.**

(a) In *Fletcher v. Hudson* (1880), 5 Ex. D. 287; 45 J. P. 5; 38 Digest 170, 137, *Express exceptions.* BRAMWELL, L.J., said: "I think the words 'except as in this Act expressly provided' must mean 'except when there is an express provision that some person may sue who is neither a party aggrieved, nor a local authority, nor a person acting with the consent in writing of the Attorney-General.' In other words, s. 253 may be read thus: Proceedings may be taken by a party aggrieved; they may be taken by a person who has the consent of the Attorney-General; and, lastly, they may be taken by a person who, not being one of the preceding, is expressly authorised to do so. Now I find in the Act three cases, there may be more, in which such persons are expressly so authorised, namely, ss. 192, 193, and rule 70; in each of these it is provided that the penalty may be recovered by any person." The cases cited by the learned judge are all now repealed, but s. 68, *ante*, p. 4347, may be referred to as being a case in which proceedings may be taken by persons other than parties aggrieved or persons acting with the consent of the Attorney-General.

The provisions of ss. 116 and 117 (13 Halsbury's Statutes 672, 673) now repealed and replaced by s. 9 of the Food and Drugs Act, 1938, *ante*, p. 1318), were not express provisions taking proceedings for the possession of unsound meat out of s. 253. Therefore, where a medical officer of health had seized unsound meat, and it had been destroyed by order of a justice, it was held that such proceedings could not be taken by a superintendent of police without the authorisation of the local authority or the consent of the Attorney-General, as the superintendent was not a party aggrieved (*Dodd v. Pearson*, [1911] 2 K. B. 383; 75 J. P. 343; 25 Digest 112, 355).

In the metropolis it has been held that the Metropolitan Paving Act, 1817, s. 123 (11 Halsbury's Statutes 875), which empowers justices to proceed on the complaint of the persons having the control of the pavements or of any person appointed in writing for the purpose, does not apply to proceedings under s. 65 (*op. cit.* 855), which enables justices to entertain proceedings for street obstruction on the complaint of one or more credible witnesses; therefore in proceedings under s. 65 the complainant need not be authorised in writing to make the complaint (*Keen v. Alexander* (1909), 73 J. P. 423; 101 L. T. 430; 26 Digest 459, 1753).

(b) For meaning of the term "party aggrieved," see note, p. 622, *ante*.

(c) In an action where the Attorney-General's consent is required, it would appear to be necessary to allege in the statement of claim that his consent has been obtained. See *Hollis v. Marshall*, *ante*, p. 622. As to the procedure for obtaining the consent of the Attorney-General, see Garrett on Nuisances, 3rd ed., pp. 383 *et seq.*; Daniel's Chancery Forms, 6th ed., by White, p. 29.

(d) Under the Act there were formerly cases where there can be strictly no person aggrieved, and the authority which would institute the proceedings is not the authority of the district.

254. Where the application of a penalty under this Act is not otherwise provided for, one half thereof shall go the informer, and the remainder to the local authority of the district in which the offence was committed (a): Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act. **Application of penalties.**

This section was repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be read herewith.

(a) But for this provision penalties would have been payable to the treasurer of the county, borough, etc., under the S. J. A., 1848, s. 31 (11 Halsbury's Statutes 289), and the Justices Clerks Act, 1877, s. 6 (*op. cit.* 322).

The provisions of section 5 of the Criminal Justice Administration Act, 1914 (*op. cit.* 373), as to the payment and allocation of fines and fees should be referred to,

**Note to
Section 254.**

and also the provisions of s. 34 (6) of the same Act (*op. cit.* 385) as to accounting for fines by a clerk to justices.

The Municipal Corporations Act, 1882, s. 221 (10 Halsbury's Statutes 647), provides that where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices, and payable to the Crown or to any borough corporate, or to any person whomsoever, the same if recovered before any justice of a borough having separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough; but this section is not to apply to any fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered, if passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund. The present Act is, therefore, within the later part of the section.

The following cases may be referred to for the purpose of elucidating the text: *Seamen's Hospital Society v. Liverpool (Mayor of)* (1849), 4 Exch. 180; 13 J. P. 588; 33 Digest 459, 1716; *Wray v. Ellis* (1858), 1 E. & B. 276; 22 J. P. 800; 25 Digest 429, 291; *Receiver of Metropolitan Police District v. Bell* (1872), L. R. 7 Q. B. 433; 37 J. P. 55; 33 Digest 460, 1725; *Att.-Gen. v. Moore* (1878), 3 Ex. D. 276; 42 J. P. 372; 33 Digest 460, 1724; *Alison v. Hall* (1888), 4 T. L. R. 524; *R. v. Titterton, Ex parte Quelch*, [1895] 2 Q. B. 61; 59 J. P. 327; 37 Digest 178, 10; *R. v. West Riding JJ.*, [1900] 1 Q. B. 291; 33 Digest 381, 904.

As to the payment into the Police Fund of fines awarded to police constables (being common informers), see the Penalties (Application) Act, 1850, s. 1; the Police Pensions Act, 1921, Sched. II. (12 Halsbury's Statutes 894); *Alison v. Charlesworth* (1885), 49 J. P. 294; 33 Digest 460, 1720; *Alison v. Hall, supra*.

* * * * *

Summary
proceedings
for recovery
of rates.

256. If any person assessed to any rate made under this Act (*a*) by any urban authority fails to pay the same when due and for the space of fourteen days after the same has been lawfully demanded in writing (*b*), or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing (*b*), any justice may summon the defaulter to appear before a court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter (*c*).

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(*a*) Rates made "under this Act" are now limited to private improvement rates. See the R. and V. A., 1925, *ante*, p. 2113. Under that Act, which substituted a general rate for the general district rate, borough rate and poor rate, proceedings for recovery of the general rate are to be taken in the same way as was formerly appropriate to the poor rate (s. 2 (3), *ibid.*, *ante*, p. 2119).

It was held that, notwithstanding the incorporation with this Act of the provisions of the Waterworks Clauses Act, 1847 (see now s. 120, P. H. A., 1936, *ante*, p. 368), as to the recovery of water rates, a water rent accrued due under an agreement for supply of water is a rate "made under this Act" within the meaning of this section, and that the period of limitation applicable to the recovery thereof commences to run on a failure to pay within fourteen days after demand thereof (*Elliott v. Russell*, [1902] 2 K. B. 748; 67 J. P. 158; 43 Digest 1065, 52).

(*b*) As to the service of this demand, see s. 267, *post*, p. 4495. A demand will, it is presumed, be sufficient if made by the collector of the rate. There is no limit of

Demand.

time within which such demand must be made (*Keeton v. Sheffield Coal Co., Gill v. Mellor, post*, p. 4486).

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Section 256.**

(c) In the case of rates made under this Act the text expressly provides for the making of an order by a court of summary jurisdiction, and such rates are civil debts (*Southwark and Vauxhall Water Co. v. Hampson U. D. C.*, [1899] 1 Q. B. 273; 63 J. P. 100; 33 Digest 370, 791). The section makes no provision for imprisonment in default of distress, but that defect is supplied by the S. J. A., 1848, s. 22 (11 Halsbury's Statutes 284), as amended by the S. J. A., 1879, ss. 6, 35 (*op. cit.* 325, 342), the effect of which is that in default of distress the defendant may be committed, but only upon proof of means given on judgment summons.

Enforcement
of payment.

As to the costs of distress in respect of sewer rates under the Sewers Acts, see *R. v. Smith, Ex parte Porter*, [1927] 1 K. B. 478; 91 J. P. 14; Digest Supp.

The provisions of this section are different from those contained in the corresponding P. H. A., 1848, s. 103, which provided that in case the defaulter failed to appear according to the exigency of the summons, or no sufficient cause for non-payment were shown, the justice might by warrant cause the rate to be levied by distress of the goods and chattels of the defaulter. With reference to this provision it was held that the section did not confer a discretionary power upon the justice, but that he was bound to act ministerially (*R. v. Newman* (1860), 29 L. J. M. C. 117; 6 Jur. (n.s.) 293). It was also decided that the justices could not, when required to enforce payment of this rate, entertain any question as to the legal election of the members of the board who made the rate (*R. v. Derbyshire J.J.* (1855), 19 J. P. 772; 38 Digest 631, 1503); nor as to the purpose to which the rate was to be applied (*Luton L. B. v. Davis* (1860), 24 J. P. 677; 29 L. J. M. C. 173; 18 Digest 415, 1546; see also *Sandgate L. B. v. Pledge, p. 4488, post*). In fact, the duties of justices resembled their duties in enforcing a poor rate.

Duty of
justices.

In *Stirk v. Halifax Assessment Committee*, [1922] 1 K. B. 264; 86 J. P. 9; 38 Digest 581, 1157, it was held that a valuation list which purported to amend the existing valuation of certain classes of property by an addition of 25 per cent. all round, was bad. But notwithstanding this it was held that the justices on a summons to enforce payment of the poor rate made on such list, had not jurisdiction to refuse to issue their distress warrant (*Shillito v. Hinchliffe*, [1922] 2 K. B. 236; 86 J. P. 110; 18 Digest 401, 1414). But *quære*, Whether this applies to proceedings to enforce a rate made under this Act, having regard to the provisions of the above section.

Notwithstanding the alteration in the text the justices, to a great extent at any rate, still act ministerially, and have not unfettered discretion to determine when rates are or are not paid; and it is for the urban authority to remit for poverty. See s. 225, *ante*, p. 4474. As to whether justices can grant time to a ratepayer or order payment by instalments, see an article at 75 J. P. N. 193. The point appears to be doubtful. Reference should be made to the cases in the preceding paragraph and *infra*, and on p. 4486, *post*, for decisions as to what defences are open to a ratepayer before justices: but it may be well to refer here to the language of JAMES, L.J., in *Re Neath and Brecon Rail. Co.* (1874), 9 Ch. App. 263; 42 Digest 716, 1346: "By the courtesy of Parliament when dealing with courts of justice, the word 'lawful' is used, but when it is said that it shall be lawful for the court to do a certain thing, it means that it shall be done, and it is in fact unlawful to do anything else." In *Julius v. Oxford (Bishop of)* (1880), 5 App. Cas. 214; 44 J. P. 600; 42 Digest 716, 1351, Lord CAIRNS, L.C., said that "where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the court will require it to be exercised."

As already stated, the "order" here required was a new provision, and was not required by the previous statute (*R. v. Tottenham L. B., Ex parte Perry* (1860), 24 J. P. 87; 1 L. T. 413). It was therefore held that justices in acting under that statute were not affected by the limitation of time imposed by the S. J. A., 1848, s. 11 (11 Halsbury's Statutes 278) (*Sweetman v. Guest* (1868), L. R. 3 Q. B. 262; 32 J. P. 212; 18 Digest 430, 1671). The necessity for an order under the present section brings in the limit of time prescribed by the S. J. A., 1848, s. 11. That section takes effect in every case where upon a complaint a justice is authorised by law to make an order, and requires the complaint to be made within six calendar

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months from the time when the matter of such complaint arose. As (except in cases of "quitting") no ground for making a complaint arises till 14 days after demand, it would appear that complaint for these rates must be laid within a period of six months *plus* 14 days after they have been demanded, as required by this section (see *Elliott v. Russell*, on p. 4484, *ante*). It should be observed that there is no limit of time within which a demand must be made (see *Keeton v. Sheffield Coal Co.* [1901] 2 K. B. 26; 65 J. P. 341; 38 Digest 627, 1469). In this case, after the rate was demanded, the assessment was reduced, and thereupon an amended demand was made. It was held that the six months ran from the time of the amended, and not of the original, demand. See also *Gill v. Mellor*, [1924] 1 K. B. 97; 87 J. P. 190; 38 Digest 625, 1454, where demand was not made within the year for which the rate was laid.

In *R. v. Hannam* (1886), 34 W. R. 355; 18 Digest 415, 1548, the Court of Appeal held that on an application before justices for payment of a rate under this section, the rate being good on the face of it, and the property in respect of which the occupier is rated being within the district of the local authority, the justices' duty is merely ministerial, and they have no jurisdiction to inquire into the validity of the rate. The judgment of BOWEN, L.J., in this case is worthy of careful perusal, as stating in a concise form the chief exceptions to the general rule that justices are bound to enforce a rate good upon the face of it, *e.g.*, non-occupation (*R. v. Bradshaw* (1880), 2 E. & E. 836; 24 J. P. 727; 18 Digest 401, 1413; *R. v. Bagshaw, etc. JJ.* (1896), 75 L. T. 513; 18 Digest 400, 1408); and where the property is outside the district of the rating authority (*Walker v. G. W. Rail. Co.* (1859), 2 E. & E. 325; 24 J. P. 262; 38 Digest 627, 1465; *Baglan Bay Tin Plate Co. v. John* (1895), 72 L. T. 805; 18 Digest 415, 1545; but see *R. v. Jefferson* (1884), 48 J. P. 393; 38 Digest 630, 1493); the Lord Justice reserved his opinion whether there would not be another exception in the case of an exemption from rating under a public general statute. As to this last point, see *Bates v. Plumstead Overseers* (1895), 59 J. P. 118; 64 L. J. M. C. 127; 18 Digest 415, 1549; *Rayner v. Drewitt* (1900), 64 J. P. 567; 82 L. T. 718; 38 Digest 486, 445; and see also *Wixon v. Thomas*, [1911] 1 K. B. 43; 75 J. P. 58; 38 Digest 487, 447, where it was held that the fact of premises being in the occupation of the Crown may be accepted by justices as a reason for not enforcing a general rate.

In *Whenman v. Clark*, [1916] 1 K. B. 94; 80 J. P. 128; 38 Digest 456, 218, it was held that a Court of Summary Jurisdiction (upon an application to them for an order for payment under this section) has jurisdiction to entertain the question whether the occupier by reason of a public Act is exempt from being rated, the facts not being in dispute. And *per* SWINFEN EADY and PICKFORD, L.J.J.: it is a good working rule, provided there is no dispute as to facts, that justices upon such an application have jurisdiction to entertain a defence that the defendant ought not to have been rated at all, or, if rateable at all, ought not to be rated upon the full rateable value. Reference might be made to an interesting discussion upon the last mentioned decision in *Stevenson v. Orr*, [1916] 2 I. R. 619; 38 Digest 464, *g*.

Where there is occupation of part only of the property rated the remedy is by appeal against the rate, and justices must as a rule issue a warrant to enforce payment (*Manchester (Overseers of) v. Headlam* (1888), 21 Q. B. D. 96; 52 J. P. 517; 18 Digest 401, 1415). The test appears to be whether it is possible to satisfy the description in the rate book without including property not occupied by the defendant (*Margate Corporation v. Pettman* (1912), 76 J. P. 145; 106 L. T. 104; 38 Digest 469, 312). See also *Langford v. Cole* (1910), 74 J. P. 229; 102 L. T. 808; 38 Digest 453, 201, and *Curzon v. Westminster Corporation* (1916), 80 J. P. 468; 14 L. G. R. 1112; 38 Digest 448, 163, in both of which cases, the ratepayer not being in occupation of the whole of the property rated, it was held that a distress warrant ought not to have been issued.

In cases arising out of "passive resistance," it has been held that where a ratepayer tenders a portion of a poor rate which is refused, and the amount tendered is again tendered before the justices and again refused by the overseers, the justices have a discretion whether they will issue a distress warrant for the whole rate or require the overseers to accept the sum tendered, and issue a warrant for the balance (*R. v. Gillespie, Ex parte West Ham Overseers*, [1904] 1 K. B. 174; 68 J. P. 11; 18 Digest 405, 1453; *Re Wyles* (1903), 68 J. P. 13; 73 L. J. K. B. 112, n.; 18 Digest 405, 1454).

In *Sheffield Waterworks Co. v. Mayor, etc. of Sheffield* (1885), 50 J. P. 6; 55 L. J. M. C. 40; 38 Digest 626, 1462, the respondents summoned the appellants to recover payment of a general district rate on certain property of the appellants. The rate was made, as regards some of the appellants' property on the basis of a supplemental valuation list, and as regards the remainder on the basis of the valuations on which the previous rates had been made. After the rate had been demanded and before the summons was issued, the assessment committee reduced the net rateable value of the hereditaments and premises occupied by the appellants:—*Held*, that sufficient cause was shown for non-payment of the rate within the meaning of this section. The court distinguished *Sandgate L. B. v. Pledge*, *post*, p. 4488, on the ground that in that case the validity of the rate was sought to be impeached, while here only a wrong amount had been demanded. It is obvious, therefore, that in similar cases an authority ought to amend their rates under s. 221, *ante*, p. 4472, and proceed only for the reduced amount.

It would seem that an owner might have shown cause if summoned for rates as an owner under s. 211 ((13 Halsbury's Statutes 714) now s. 11 of the Act of 1925, Vol. V., *post*) by proving that the rated premises were assessed at a sum greater than the prescribed amount, and that therefore the occupier was rateable (*Norwood (Overseers of) v. Salter*, [1892] 2 Q. B. 118; 56 J. P. 535; 38 Digest 514, 675).

The fact that the property rated was at a distance of three miles from any of the paving, lighting, or drainage for which the rate was made, was held to be no sufficient cause for non-payment (*Newport (Mayor, etc. of) v. Lang* (1892), 57 J. P. 199; 38 Digest 619, 1435).

After a poor rate and a district rate had been made, a ratepayer gave notice to the assessment committee of an objection to his assessment. After hearing the objection the committee raised his assessment, and amended demands were served claiming rates upon such increased assessment. The ratepayer paid the amounts originally named in the rates and originally demanded. It was held that the committee had no power to increase the assessment, and that a distress warrant for the balance was properly refused (*Hudson v. Rhodes*, [1909] 1 K. B. 85; 73 J. P. 66; 38 Digest 583, 1163).

In *Rochdale Building Society v. Mayor, etc. of Rochdale* (1886), 51 J. P. 134; 18 Digest 420, 1591, commissioners made a rate in 1876 on P., an owner, for improvement expenses, and he paid part thereof and died. At the date of the rate P. had executed a mortgage to B., who entered into possession in 1882. In 1885 the justices issued a distress warrant against B. for the unpaid rate made on P.:—*Held*, that the justices had no power to issue a distress warrant against B., who was not named in the rate.

In January, 1907, upon an appeal against a general district rate made by the Thornton U. D. C., the Court of Appeal held that the B. & F. Tramway Co. were rateable in respect of their tramroad upon one-fourth only of its value, and this decision was subsequently affirmed. In June, 1907, a neighbouring urban council made a district rate in which they rated another portion of the same tramroad at its full value and demanded payment. On a summons to enforce payment the company contended that they were liable to pay on one-fourth part only of the net annual value of the tramroad, and that a distress warrant should not be granted for the full amount. The justices held that the company had shown sufficient cause for non-payment of the full amount, and they reduced the rate and made an order for the reduced amount, which was demanded and paid. The council obtained a special case but withdrew it owing to failure to comply with the C. O. rules. A rule *nisi* was then obtained calling upon the justices to show cause why they should not hear and determine an application for the issue of a distress warrant for the full amount of the rate. It was held that, whether the justices were or were not entitled to make an order for a less amount than that appearing on the face of the rate, the court would not in the circumstances issue a *mandamus* to them to issue a distress warrant for the full amount (*R. v. Shuttleworth and Others* (1908), 72 J. P. 329; 38 Digest 631, 1505). In June, 1908, the same council made another rate, rating the tramroad at one-fourth only. On a summons to enforce payment of this rate (£447), it was proved that whilst the company's original appeal (begun in 1904) against the Thornton U. D. C. claiming to be rated as a railway was pending, the council now concerned made rates in 1905 and 1906, in which the

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company were rated in full for the tramroad, and not at one-fourth, which would have reduced their liability from £1,056 to £596. It was also proved that in August, 1905, the council undertook to refund to the company the difference, if they were successful in their appeal. The company consequently paid the full amount of £1,056, and had thus made an over-payment of £460. It was held, that they had shown sufficient cause for non-payment of the rate dated June, 1908 (*Blackpool and Fleetwood Tramroad Co., Ltd. v. Bispham-with-Norbreck U. D. C.*, [1910] 1 K. B. 592; 74 J. P. 141; 38 Digest 626, 1464). In July, 1907, a third urban council made general and special improvement rates in which they rated another portion of the same tramroad at the full value instead of at one-fourth. The company, relying on the decision in the *Thornton U. D. C. Case*, claimed to pay only one-fourth; and it was held that sufficient cause had been shown to justify the bench in refusing a distress warrant for the full amount (*Dixon v. Blackpool & Fleetwood Tramroad Co.*, [1909] 1 K. B. 860; 73 J. P. 219; 18 Digest 421, 1592).

As to the recovery of a number of local rates of different kinds in the same summons, see the Poor Rates Recovery Act, 1862 (14 Halsbury's Statutes 531).

For a case where damages were recovered for wrongful distress put in after payment in pursuance of an order, see *Mutton v. Hornsey U. D. C.*, Times, April 15th, 1899; and see *Atkins v. Hutton* (1910), 74 J. P. 329; 18 Digest 416, 1555, as to the civil liability of a landlord who, having agreed with his tenant to pay the rates, fails to do so, with the result that the tenant is imprisoned. See also on this point *Reigate Corporation v. Wilkinson* (1919), 84 J. P. 17; 38 Digest 633, 1524.

It would seem that an appeal to quarter sessions against the order lies under s. 269, *post*, p. 4499.

A special case may be stated by justices under the S. J. A., 1879, s. 33 (11 Halsbury's Statutes 341), upon an application to enforce payment of a rate under this section. Where, however, a rate is good upon the face of it, the justices may not refuse to make an order for payment on the ground that there is a concurrent rate made for the same purpose (*Sandgate L. B. v. Pledge* (1885), 14 Q. B. D. 730; 49 J. P. 342; 18 Digest 415, 1547).

An application to a court of summary jurisdiction for an order to enforce payment of a rate under the text is not a criminal cause or matter, and therefore an appeal lies to the Court of Appeal from the judgment of the High Court upon a case stated by the court of summary jurisdiction (*Southwark and Vauxhall Water Co. v. Hampton U. D. C.*, [1899] 1 Q. B. 273; 63 J. P. 100; 18 Digest 422, 1605).

By s. 33 of the Criminal Justice Administration Act, 1914 (11 Halsbury's Statutes 384), the provisions of the Summary Jurisdiction Acts, relating to the backing of warrants, and of s. 41 of the Summary Jurisdiction Act, 1879 (*op. cit.* 345), relating to the proof of service of documents, and of the handwriting and seal on documents, shall apply to the proceedings in respect of the non-payment of any rate.

By the Bills of Sale Act (1878) Amendment Act, 1882, s. 14 (2 Halsbury's Statutes 106), a bill of sale is no protection against the seizure of goods for poor and parochial rates. But the general district rate of an urban authority was held not to be a tax or poor or other parochial rate within the meaning of that section (*Richards v. Kidderminster Overseers*, [1896] 2 Ch. 212; 7 Digest 151, 820). It had previously been held that the section did not apply where proceedings had been taken in the county court under s. 261, *post*, p. 4491 (*Wimbledon L. B. v. Underwood*, [1892] 1 Q. B. 836; 56 J. P. 633; 7 Digest 151, 819). For a case where, upon a distress for rates, it was held that there had been a bona fide sale of chattels, and that a document was not a bill of sale, see *Prudential Mortgage Co., Ltd. v. Marylebone Borough Council* (1909), 8 L. G. R. 901; 7 Digest 10, 40. As to the recovery of rates in case of bankruptcy or liquidation, see Bankruptcy Act, 1914, s. 33, *post*, p. 5144, and the Companies Act, 1929; Vol. V. and 2 Halsbury's Statutes 775.

Rates payable in respect of property disclaimed by a trustee in bankruptcy can be recovered from the trustee (*In re Lister*, [1926] Ch. 149; 90 J. P. 33; Digest Supp.).

An assistant overseer had no authority to accept payment of poor rates in the form of bills of exchange accepted by the ratepayer; and a ratepayer could not plead payment if the assistant overseer applied such bills to his own purposes (*Smith v. Barkham* (1887), 51 J. P. 581; 38 Digest 625, 1457). By fraudulently representing that a rate had been made, an assistant overseer obtained from the respondents payment

of the amount of the imaginary rate. He paid the amount into his banking account, and then out of it transferred to the overseers, in payment of prior rates previously collected from other ratepayers, but not accounted for, a sum nearly as large as the sum paid to him by the respondents. A rate for the period in respect of which the respondents had made the payment was subsequently made, the amount due from the respondents being the same as that already paid by them. On an application by the overseers against the respondents for a distress warrant on the ground of non-payment of the rate, the justices found that the overseers had received the proceeds or the greater part of the proceeds of the payment made by the respondents, and refused to issue a distress warrant. It was held, that there was no evidence that the respondents had paid the rate in question, and that the justices were not, on the ground of payment, entitled to refuse to issue a warrant (*Hornchurch Overseers v. L. T. and S. Rail. Co.* (1912), 76 J. P. 385; 107 L. T. 293; 38 Digest 625, 1458).

Note to
Section 256.

Where a person was induced, by a false statement that rates had been made and were due, to pay money to a rate collector by cheque crossed generally and marked not negotiable, and the collector cashed such cheque at a bank where he had been in the habit of cashing cheques for rates, but where he had no account, it was held that the bank was not protected by the Bills of Exchange Act, 1882, s. 82 (2 Halsbury's Statutes 35), and were liable for the amount of the cheque to the person defrauded (*G. W. Rail. Co. v. London and County Banking Co.*, [1901] A. C. 414; 3 Digest 239, 673). See further as to this point the notes to L. G. A., 1933, s. 120, p. 906, *ante*.

257. Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act (a) or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate (b) not exceeding five pounds per centum per annum, from the date of service of a demand for the same (c) till payment thereof, from any person who is the owner (d) of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred (e). In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand (f).

Recovery
of expenses
by local
authority
from owners.

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same (g).

The local authority may, by order (h), declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate (hh) not exceeding five pounds per centum per annum; until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner (i) from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act (k).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2),

Note to Section 257. *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) See ss. 150, 158, *ante*, pp. 4388, 4442. See also various sections of subsequent Acts which are to be read with this Act, *e.g.*, the P. H. Acts Amendment Act, 1890, s. 35, *post*, p. 4812; the Private Street Works Act, 1892, s. 13, *post*, p. 4862, etc. "Expenses" in this section does not include special expenses. Where, therefore, special expenses in respect of sewerage works were charged upon a contributory place under that section, it was held that premises in that contributory place were not subject to a charge under this section in respect of those expenses (*Calder's Yeast Co. v. Stockdale* (1926), 90 J. P. 206; 24 L. G. R. 569; 38 Digest 576, 1123).

(b) It was not clear who was to settle the amount of this rate. Probably the justices or the court. As regards expenses incurred after September 2nd, 1926, the rate is to be 5 per cent. or such other rate as the Minister of Health may from time to time fix and different rates may be fixed for different purposes and in different cases (s. 77, P. H. A., 1925, Vol. V., *post*); as from April 1st, 1934, the rate is 4 per cent. (Ministry of Health (Rate of Interest on Private Improvement Expenses) Order, 1934 (S. R. & O., 1934, No. 274)). The Minister has made a number of orders of local application. The owner cannot claim to deduct income tax from the interest (*Gateshead Corporation v. Lumsden*, [1914] 2 K. B. 883; 78 J. P. 283; 26 Digest 552, 2484).

(c) This supplies an omission in previous legislation, which was referred to in *Wallington v. Willes* (1864), 16 C. B. (N. S.) 797; 33 L. J. M. C. 233; 38 Digest 155, 46, as to the commencement of the interest. As to what is a sufficient demand, see *Wilson v. Bolton Corporation* (1871), L. R. 7 Q. B. 105; 36 J. P. 405; 26 Digest 535, 2352.

(d) See the definition of *owner* in s. 4, *ante*, p. 4335. And see *R. v. Swindon L. B.*, and other cases cited therewith on pp. 4412, 4413.

As to summary proceedings for the recovery of paving expenses under s. 150, see that section and the notes thereunder, *ante*, pp. 4388 *et seq.*

(e) See note (l) to P. H. A., 1936, s. 291, *ante*, pp. 603, 607.

Time limit.

(f) As to the limitation of time for summary proceedings, see note (l) to s. 150, *ante*, p. 4407. But there is no limitation of the time within which a demand must be made (*Wortley v. St. Mary, Islington (Vestry of)* (1886), 51 J. P. 166; 26 Digest 499, 2075; *Hampstead Corporation v. Carant*, [1903] 2 K. B. 1; 67 J. P. 344; 26 Digest 499, 2076).

It is only upon this notice that the board can recover summarily, and that appeal lies to the M. of H. under s. 268, *post*, p. 4495. See *per* BRETT, L.J., in *R. v. Local Government Board, Ex parte Thorp*, in notes to s. 268, *post*, p. 4496.

Conclusive-
ness of
apportion-
ment.

(g) With reference to the conclusive character of the apportionment, see *Cook v. Ipswich L. B.*, *ante*, p. 4408; *Shanklin L. B. v. Millar*, *ante*, p. 4415; *Tunbridge Wells L. B. v. Akroyd*, *ante*, p. 4416; *Hesketh v. Atherton L. B.*, *ante*, p. 4408; *Manchester (Mayor of) v. Hampson*, *ante*, p. 4415; *Samdgate L. B. v. Keene*, *ante*, p. 4416. From these cases it would seem that failure to dispute the apportionment does not prevent the owner, when before the justices, from disputing his liability *in toto*, but that where his objection is only to part of the sum apportioned, so that there is jurisdiction as to the residue, that objection can only be taken by way of objection to the apportionment under this section. See *per* SMITH, J., in *Bournemouth Commissioners v. Watts*, *ante*, p. 4409; *Midland Rail. Co. v. Watton*, *ante*, p. 4409. In the latter case it was held that when the apportionment has not been disputed, it is no answer to summary proceedings that the defendant has been charged in respect of a greater extent of frontage than he possesses. And see also *Eccles v. Wirral Sanitary Authority*, *ante*, p. 4408.

This dispute is to be settled by arbitration. See s. 150, note (o), *ante*, p. 4416, as to arbitrations arising under that section.

In *Re Stoker and Morpeth Corporation*, [1915] 2 K. B. 511; 79 J. P. 201; 26 Digest 531, 2301, an apportionment had been made under s. 150, *ante*, p. 4388, to which a frontager gave notice of objection whereupon the local authority appointed an arbitrator. The frontager did not appoint an arbitrator within fourteen days as required by s. 180, *ante*, p. 4462, but within that time withdrew his objection disputing the apportionment. The arbitration then proceeded *ex parte* and upon an action to

set aside the award it was held that a frontager who had not appointed an arbitrator to act for him was entitled to withdraw his notice disputing the apportionment within fourteen days. The arbitrator had therefore no power to act and the award was a nullity.

Note to Section 257.

Where no apportionment is necessary, *e.g.*, where expenses have been incurred by an authority under the Towns Improvement Clauses Act, 1847, s. 75, *ante*, p. 4207, in erecting a hoarding in front of a dangerous building, the second paragraph of s. 257 as to the time for disputing apportionments has no application (*Usk U. D. C. v. Mortimer* (1903), 68 J. P. 38; 90 L. T. 25; 33 Digest 404, 1150. See also *Bower v. Caistor R. D. C.* (1911), 75 J. P. 186; 38 Digest 229, 603).

Non-applicability of paragraph if no apportionment necessary.

(h) This is an alternative provision to that in s. 213, *ante*, p. 4468, which deals with private improvement rates. That section enables an authority to make a rate on the occupier for these expenses. This section enables the authority to make an order on the owner for the same, and to charge the amount on the premises, the amount to be payable by annual instalments, and the rate of interest to be settled by themselves. It would seem that the authority must in the first instance decide which course they will adopt (see *Wilson v. Bolton (Mayor of)*, *ante*, p. 4418), but their decision will not affect their right to enforce the charge on the premises created by the first paragraph of the section, at any rate in respect of payments due and in arrear: see the judgment of BRETT, L.J., in *Tottenham L. B. v. Rowell and Payne v. Cardiff R. D. C.* cited in note (l), *ante*, p. 603.

Order for instalments.

An urban authority, after giving notice to N. to pave, etc., a new street, did the work at a cost of £4,758, to defray which they borrowed, with the sanction of the L. G. B., money at 4 per cent. The sum apportioned on N. was £2,412, and the authority duly resolved to make the sum payable by instalments during twenty years with interest at £5 per cent. On non-payment of an instalment by N.:—*Held*, the justices were right in enforcing payment, and were not bound to allow the objection that the authority charged higher interest than they themselves paid (*N. B. Rail. Co. v. Holme Cultram L. B.* (1889), 54 J. P. 86; 26 Digest 536, 2356).

(hh) As regards expenses incurred after September 2nd, 1926, the rate is to 5 per cent. or such other rate as the M. of H. may from time to time fix, and different rates may be fixed for different purposes and in different cases (s. 77, P. H. A., 1925, Vol. V., *post*). The Minister has made a number of orders of local application.

(i) See s. 251, *ante*, p. 4481.

There must apparently be a fresh demand for each instalment, and the six months' limitation will run from such demand. See *Prescott v. Nicholson* (1889), 53 J. P. 597; 26 Digest 500, 2077. As to enforcing the charge on the premises in respect of unpaid instalments, see *Tottenham L. B. v. Rowell*, *ante*, p. 603, and *Payne v. Cardiff R. D. C.*, *ante*, p. 604.

Recovery of instalments.

(k) See s. 214, *ante*, p. 4469.

Deduction from rent.

258. No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed.

Justices may act though members of local authority or liable to contribute.

This section was repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

See notes to P. H. A., 1936, s. 304, *ante*, pp. 638 *et seq.*

* * * * *

261. Proceedings for the recovery of demands below fifty pounds (a), which local authorities are empowered to recover in a summary manner (b), may, at the option of the local authority, be taken in the county court as if such demands were debts within the cognizance of such courts (c).

Demands below £50 may be recovered in county court.

**Note to
Section 261.**

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) This is an increase of the limit in Local Government Act (1858) Amendment Act, 1861, s. 24.

(b) See s. 251, *ante*, p. 4481. This section applies, therefore, only to sums which can be recovered summarily—not to those which can be recovered in other ways.

**Limitation
of time in
county court.**

(c) The six months' limitation for summary proceedings is also applicable to the proceedings taken in the county court (*Tottenham L. B. v. Rowell* (1876), 1 Ex. D. 514; 26 Digest 535, 2344; following *West Ham L. B. v. Maddams* (1876), 1 Ex. D. 516 n.; 40 J. P. 470; 26 Digest 535, 2343). The principle of these cases as applied to this particular Act has been since accepted; but they were distinguished in *Leeds Corporation v. Robshaw* (1887), 51 J. P. 441; 26 Digest 552, 2478. See that case and other cases cited *ante*, at p. 611.

See also notes on p. 587, *ante*.

In *Eccles v. Wirral Sanitary Authority*, *ante*, p. 4408, MATHEW, J., says: "By s. 261 jurisdiction is conferred on the county court in cases of this kind (*i.e.*, to recover expenses due under s. 150), and although I cannot find any provision which in terms gives the superior court jurisdiction, I should infer that where the amount is above £50 an action would lie in the superior court." But this dictum appears to be contrary to the rule that where a debt is created by a statute which expressly provides for its recovery, the remedy so provided must be followed, and an action will not lie: see *St. Pancras Vestry v. Batterbury*, and other cases cited at p. 4407, *ante*. And there are dicta in later cases that no action will lie in a superior court for the recovery of such expenses: see *In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 60 J. P. 708; 33 Digest 369, 786; *In re Hanwell U. D. C. and Smith* (1904), 68 J. P. 496; 26 Digest 531, 2300. Under the Private Street Works Act, 1892, s. 14, *post*, p. 4864, actions may be brought in any court of competent jurisdiction.

**Proceedings
not to be
quashed for
want of form.**

262. No rate order conviction or thing made or done or relating to the execution of this Act shall be vacated quashed or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by certiorari or any other writ or process whatsoever into any of the superior courts (a): Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior court, or of any rate order conviction or thing to which such special case relates (b).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

**When
certiorari
lies.**

(a) The Act does not contain any definition of the term "superior court," but the text evidently refers to the High Court of Justice. Apart from this provision, certiorari does not lie to remove other than judicial acts. See *R. v. Watermen's Co.*, [1897] 1 Q. B. 659; 61 J. P. 388; 44 Digest 117, 936; *R. v. Sharman*, [1898] 1 Q. B. 578; 62 J. P. 296; 16 Digest 414, 2729; *R. v. Bowman*, [1898] 1 Q. B. 663; 62 J. P. 374; 30 Digest 34, 267. The phrase "judicial act" must, however, be taken in a very wide sense, including many acts that would not ordinarily be termed "judicial." The true view of the limitation appears to be that the term "judicial act" is used in contrast with purely ministerial acts. See *Leeds Corporation v. Ryder*, *ante*, p. 642, when in the Court of Appeal (*sub nom.*, *R. v. Woodhouse*, [1906] 2 K. B. 501; 70 J. P. 485; 16 Digest 398, 2421), in which case *R. v. Sharman*, *supra*, on this point, was not followed. See also *R. v. Dublin Corporation* (1878), 2 L. R. Ir. 371; 38 Digest 599, *e*, where MAY, C.J., said: "It is established that the writ of certiorari does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection the term 'judicial' does not necessarily mean acts of a judge, or legal tribunal sitting for the determination of matters of law, but

for the purpose of this question, a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others." This passage was cited with approval by PALLES, C.B., in *R. v. Kerry C. C.*, [1905] 2 I. R., at p. 303, and by Lord ATKINSON in *Frome United Breweries Co. v. Bath JJ.*, [1926] A. C. at p. 602; 90 J. P., at p. 124; Digest Supp., and was adopted by the Irish Court of Appeal in *R. v. Local Government Board for Ireland*, [1902] 2 I. R. 349, where the difference between "judicial" and "ministerial" acts was elaborately discussed. See also *R. v. Electricity Commissioners*, [1924] 1 K. B. 171; 88 J. P. 13; Digest Supp. See also *R. v. Dublin Corporation*, [1911] 2 I. R. 245, and *R. v. Doherty* (1910), 74 J. P. 304; 26 T. L. R. 502; 16 Digest 415, 2736, where a warrant of commitment was quashed. The point was raised but not decided in *Ex parte Stott*, [1916] 1 K. B. 7; 80 J. P. 169; 16 Digest 459, 3341, as to whether a notice prohibiting the exhibition of a film was a proper subject-matter for a *certiorari*.

Notwithstanding this provision, a writ of *certiorari* may be granted where the proceedings show on the face of them a want of jurisdiction (*R. v. Gosse* (1860), 3 E. & E. 277; 30 L. J. M. C. 41; 16 Digest 440, 3050; *Re Broughton L. B.* (1865) 12 L. T. 310; *R. v. Staffordshire JJ.* (1867), 16 L. T. 430; 16 Digest 437, 3021; *R. v. Wood* (or *Rose*), *ante*, p. 1093; *R. v. Slater* (1903), 67 J. P. 299; *Colonial Bank of Australasia v. Willan* (1874), L. R. 5 P. C. 417; 16 Digest 440, 3060). In the case last mentioned it was laid down that when a *certiorari* is said to be taken away by statute, the superior court is not absolutely deprived of the power to issue the writ; but its action as to the writ is controlled and limited, and it cannot quash the order removed by *certiorari* except upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order, or a manifest fraud in the party procuring it. Matters on which the defect of jurisdiction depends may be apparent on the face of the proceedings, or may be brought before the superior court by affidavit, but they must be intrinsic to the adjudication impeached. Objections on the ground of defect of jurisdiction may be founded on the character and constitution of an inferior court, the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding which was necessary to give jurisdiction to the court. The objection of defect of jurisdiction cannot be entertained if it rests solely on the ground that the judge has erroneously found a fact which was essential to the validity of his order, but which he was competent to try (*ibid.*). And see *Ex parte Bradlaugh* (1878), 3 Q. B. D. 509; 42 J. P. 583; 16 Digest 441, 3070; *R. v. Bradford*, [1908] 1 K. B. 365; 72 J. P. 61; 16 Digest 423, 2834; *R. v. Queen's County JJ.*, [1908] 2 I. R. 285; 26 Digest 356, b; *Ex parte Stott*, [1916] 1 K. B. 7; 80 J. P. 169; 16 Digest 459, 3341; cases cited in Paley on Convictions, 7th ed., at p. 364, and Short and Mellor's Crown Office Practice, 2nd ed., p. 43. See generally as to the effect of a clause taking away *certiorari*, *R. (Martin) v. Mahony*, [1910] 2 I. R. 695; 25 Digest 451, g.

Where both parties agreed to waive a similar provision, and a recorder stated a case for the opinion of the court, the fact that the corresponding section in the Municipal Corporations Act, 1835, had taken away the *certiorari* was held not to prevent the court from determining the question (*R. v. Dickenson* (1857), 7 E. & B. 831; 22 J. P. 243; 16 Digest 443, 3090). Waiver of objection.

As to the practice relating to the removal of convictions, etc. by *certiorari*, see Practice. Paley on Convictions, 7th ed., Chap. V., sect. 2. See also the Crown Office Rules, 1906, Nos. 20—31. It was held that the six days' notice to the justice, under the old rules, as a preliminary to the grant of a writ of *certiorari*, must precede the motion for a rule *nisi*, and not merely the motion for the rule absolute (*Ex parte Roberts* (1886), 50 J. P. 567). But it appears now from r. 21 of the new rules that the notice need only be given six days before the return day. An application for *certiorari* to the King's Bench Division does not lie after conviction and judgment in the superior court (*Nally v. R.* (1884), 16 L. R. Ir. 1; 16 Digest 445, o).

The time limitation in r. 21 of the Crown Office Rules does not apply to the issue of a writ of *certiorari* at the instance of the Attorney-General on behalf of the Crown (*R. v. Amendt*, [1915] 2 K. B. 276; 79 J. P. 324; 16 Digest 461, 3356).

Certiorari will not issue to quash a conviction by justices pending an appeal to quarter sessions (*R. v. Barnes* (1910), 74 J. P. 231; 102 L. T. 860; 16 Digest 446, 3126).

Note to
Section 262.

**Note to
Section 262.**

Object of
proviso.

(b) This proviso was inserted to meet the difficulties which arose in cases such as *R. v. Fielding* (1853), 17 J. P. 343; 16 Digest 480, 3624; *R. v. Staffordshire JJ.* (1867), 16 L. T. 430; 16 Digest 437, 3021; *R. v. Chantrell* (1875), L. R. 10 Q. B. 587; 39 J. P. 472; 16 Digest 444, 3091. It is now rendered unnecessary, so far as regards cases stated by quarter sessions, for the S. J. A., 1879, s. 40, provides that a writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination for the purpose of obtaining the judgment of a superior court. In *Clark v. Alderbury Union* (1880), 45 J. P. 358; 29 W. R. 334; 16 Digest 434, 2969, it was held that the provision rendered a *certiorari* unnecessary to bring up a case stated by sessions on a rating appeal, and that the clerk of the peace, on receiving notice from the solicitor of the party requiring it, should send up the case to the Crown Office. As to the recognizances in such a case, see the Crown Office Rules, 1906, Nos. 24—26.

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Protection
of local
authority
and their
officers from
personal
liability.

265. No matter or thing done, and no contract entered into by any local authority or joint board or port sanitary authority, and no matter or thing done by any member of any such authority or by any officer of such authority or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action liability claim or demand whatsoever; and any expense incurred by any such authority member officer or other person acting as last aforesaid shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act.

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising.

See notes on pp. 643—653, *ante*.

Notices.

Notices, etc.
may be
printed or
written.

266. Notices orders and other such documents under this Act may be in writing or print, or partly in writing and partly in print; and if the same require authentication by the local authority the signature thereof by the clerk of the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

It is presumed that this should be read *reddendo singula singulis*, so that the notices referred to must be such as each officer by virtue of his office can properly sign.

Sanitary Law Amendment Act, 1874, s. 40, rendered the notice sufficient if it purported to be signed by the officer; but as these words are omitted, the signature must be proved in any proceedings where the notice is of importance, unless it be admitted by the opposite party.

The provision in the text was of importance under the P. H. A., 1848, in respect of non-corporate districts, where a certain number of members were required to sign special documents. But as there are now no such districts, all being incorporated,

and there is no requisition as to signature by members, the section seems to be one of extreme caution.

Note to Section 266.

See also note (d) to P. H. A., 1936, s. 284 (2), *ante*, pp. 575, 576.

267. Notices orders and any other documents (a) required or authorised to be served under this Act may be served by delivering the same to or at the residence (b) of the person to whom they are respectively addressed, or where addressed to the owner (c) or occupier of premises (c) by delivering the same or a true copy thereof to some person on the premises, or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises (d); they may also be served by post (e) by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice order or other document was properly addressed and put into the post.

Service of notices.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description (f).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) See note (a) to P. H. A., 1936, s. 285, *ante*, p. 576.

(b) See note (f) to P. H. A., 1936, s. 285, *ante*, p. 577. Except when a notice is addressed to the owner or occupier of premises and is served on someone on, or is affixed to, the premises to which it relates, such notice must, in the case of a limited company, apparently be left at or posted to the registered office of the company; see the Companies Act, 1929, ss. 370, 380, and *Pearks, Gunston and Tee, Ltd. v. Richardson*, [1902] 1 K. B. 91; 66 J. P. 119; 25 Digest 105, 289.

(c) See the definitions of *owner* and *premises* in s. 4, *ante*, p. 4335.

(d) See note (n) to P. H. A., 1936, s. 285, *ante*, pp. 577, 578.

(e) The P. H. A., 1848, s. 150, allowed service by post only when the owner's place of abode was not within the district: there is no such distinction in the text. Prepayment of the letter must be proved in order to prove service (*Walthamstow U. D. C. v. Hemwood*, [1897] 1 Ch. 41; 61 J. P. 23; 22 Digest 370, 3785). In a case decided under the Valuation (Metropolis) Act, 1869, where the wording of s. 65 (14 Halsbury's Statutes 580) is very similar to this section, it was held that the presumption that a notice had been received when properly addressed, prepaid and delivered to the post office is not merely a presumption of fact unless the contrary be shown, but is a presumption of law whether in fact the notice was received by the addressee or not (*R. v. Westminster Union, Ex parte Woodward & Sons*, [1917] 1 K. B. 832; 81 J. P. 93; 22 Digest 370, 3784). See also *Watts v. Vickers, Ltd.* (1916), 86 L. J. K. B. 177; 33 T. L. R. 137; 22 Digest 370, 3783.

(f) See note (l) to P. H. A., 1936, s. 285, *ante*, p. 577.

Appeal.

268. Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses,

Appeal in certain cases to Local Government Board.

Section 268. he may, within twenty-one days (a) after notice of such decision (b), address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority (c); the Local Government Board may make such Order in the matter as to the said Board may seem equitable, and the Order so made shall be binding and conclusive on all parties (d).

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its Order (e), direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss damage or grievance thereby sustained by him.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to the construed herewith.

(a) See next note as to the decision the notice of which gives a right of appeal. Such appeal is now to the Ministry of Health and the memorial of appeal must be received by them on or before the twenty-first day after the receipt of the notice of such decision. See also note (c), *post*, p. 4498.

Appeals can be made against "decisions" of local authorities in proceedings under s. 150 of the Act, *ante*, p. 4388.

What is a
"decision."

(b) Notice of apportionment of expenses under s. 150 having been served upon an owner, and demand of payment having been made after three months had expired (see s. 257, *ante*, p. 4489), the owner deeming himself aggrieved by the *decision* of the authority, addressed a memorial, by way of appeal, to the L. G. B., stating the grounds of his complaint. On a rule for prohibition to the Board, the Court of Appeal held that an appeal lay to the Board, and that no prohibition ought to be granted. The court held that the demand of payment was the first decision from which an appeal would lie under the section. With regard to the power of the Board on such appeal, BAGGALLAY, L.J., said: "That while they might properly refuse to travel beyond the grounds of complaint alleged in the memorial, yet that they had jurisdiction to inquire into the whole matter, and to inquire whether the aggregate amount of the expenses was unreasonable or unnecessary, as well as whether the proportion assessed upon the appellant was right." And BRETT, L.J., said: "It seems to me obvious from the construction of the Act, that the Board have power to inquire into every circumstance, however remote, which could reasonably determine the question whether it was equitable or not that a particular sum should be paid" (*R. (or Penarth) v. Local Government Board* (1882), 10 Q. B. D. 309; 47 J. P. 228; 26 Digest 532, 2318). In the same case BRETT, L.J., also expressed an opinion that the decision of the Board was judicial, and that it was their duty to hear the parties presenting the memorial, though not necessarily by hearing oral evidence. It was their duty, however, to allow the appellant to know the answer of the authority to his memorial, so as to let him reply to it. The decision in the *Penarth Case* was applied by the Divisional Court in *R. v. L. G. B., Ex parte Thorp* (1914), 79 J. P. 248; 13 L. G. R. 402; 38 Digest 154, 43, to a decision of a local authority to substitute water-closets in lieu of privies under s. 36 (now repealed) (13 Halsbury's Statutes 640). It was held that the decision referred to in s. 268 is a decision of the local authority that the expenses incurred by them should be recovered in a summary manner or that they shall be declared to be private improvement expenses, and is not any decision of the local authority in a case in which the expenses may ultimately be recovered summarily or be declared to be private improvement expenses. As to this see further notes (c), (d), *post*, p. 4498, and comments on this case in 78 J. P. N. 367.

Upon the hearing of a complaint to recover expenses under s. 150, *ante*, p. 4388, the defendant objected that the plans referred to in the notice showed that part of

the work had been executed upon land belonging to private owners. The magistrate found as a fact that the land did not belong to private owners, but formed part of the street when the notice was given, and made an order for payment of the amount apportioned. On application for *certiorari* upon affidavits which satisfied the court that the magistrate's finding was contrary to the fact, it was held, assuming that the magistrate had jurisdiction to inquire whether the case was within the statute, that the matter was at least partly within the statute, so as to give the magistrate jurisdiction, and that the remedy was not by *certiorari*. See s. 262, *ante*, p. 4492. It was further held that the proper remedy was by appeal under this section against the decision of the authority (*Wake v. Sheffield Corporation* (1883), 12 Q. B. D. 142; 48 J. P. 197; 26 Digest 638, 2370. See also *Derby (Mayor, etc. of) v. Grudgings*, *ante*, p. 4409).

Note to
Section 268.

In *Wake v. Sheffield Corporation*, *supra*, the ground of the decision was that as part of the work was executed upon a street, there was some jurisdiction to make the apportionment. "The complaint," said BRETT, M.R., "is, that although the local authority might properly have determined to pave the street, and might properly have fixed the amount to be expended thereon, yet the sum expended was not on the street only, but was partly on the street and partly on private land and that therefore the decision of the local authority was wrong; that is to say, that it fixed a wrong sum to lay before the surveyor to apportion, because it had not confined the sum to that which had been expended on the street, but had extended it to a larger sum, part of which had been expended elsewhere than on the street. The complaint, therefore, if anything, is, that the appellant is aggrieved by the decision of the local authority, and consequently it comes within the exact terms of s. 268, which has pointed out the remedy the appellant has, namely, that in respect of that grievance he is to appeal to the Local Government Board. That is the particular remedy pointed out by the statute, and it being one for a grievance in respect of a new liability, it is the only remedy which can be taken. If, therefore, the case was within the statute, the magistrate, upon the summons before him for an order for payment, could not determine whether the decision of the local authority was right or wrong; but could only inquire whether the proper notice had been given, and if it had, he could only make the order of payment. It was then said that the magistrate was bound to inquire whether the case was within the statute at all, and that if the local authority had assumed to cast a liability on a person to do that which was not within the Act, as to contribute to the expenditure of paving that which was not a street, and the magistrate found that that was so, and that it was not within the Act at all, then he had no jurisdiction to make the order. But, on the other side, it was said that if the magistrate had jurisdiction to make that inquiry he had jurisdiction in the matter, and if he came to a wrong conclusion there was an appeal to the quarter sessions, but that there it must end, and there was no appeal from the sessions. Now, it may be that the magistrate has power to inquire whether the case is within the Act at all, and if so, and he finds that it is not within the Act, it may be that he has no jurisdiction to make any further order. It may be that he is bound to make that inquiry, and that the only appeal from the conclusion he may come to is to the quarter sessions, or it may be that he has no power to make such inquiry at all. It seems to me to be unnecessary to decide that matter, for even if the magistrate had jurisdiction to inquire whether the case was or was not within the statute at all, and if supposing it was not, he had no jurisdiction to make any further order, I have come to the conclusion that this matter was not wholly without the statute. It would be without the statute if no order at all could have been made by the local authority, but if any part of the expenditure had been made in respect of a street within the meaning of the statute it is obvious that as to that part the local authority might fix the proper sum to be apportioned by the surveyor. Here it cannot be denied that a part of the expenditure was in respect of that which was a street within the meaning of the statute and that the appellant was a frontager on that street, and it therefore follows that an order might be made upon him which would be an order within the meaning of the statute, and all that could be said against it would be that although it might lawfully be made it was a wrong order." And see *Bournemouth Commissioners v. Watts* (1884), 14 Q. B. D. 87; 49 J. P. 102; 26 Digest 534, 2340. In that case an action was brought by a local authority to recover paving expenses under s. 150, *ante*, p. 4388. It appeared that part of the work,

**Note to
Section 268.**

exceeding £50, had been done by contractors employed by the authority, but that no written contract under the authority's seal had been executed as was then required by s. 174 (13 Halsbury's Statutes 698). It was assumed by SMITH, J., that the objection, if valid, would have been an objection to the apportionment which could have been raised in the time and manner provided by s. 257, *ante*, p. 4489. But according to the above cases the point might have been raised by appeal under this section. See also *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 50 J. P. 405; 26 Digest 267, 72. The assumption of SMITH, J., *supra*, is also opposed to *Waltham-stow L. B. v. Staines*, [1891] 2 Ch. 606; 26 Digest 538, 2372, where the court held that an objection to the legality of certain charges for legal and other expenses included in an apportionment under s. 150 could only be raised by way of appeal under this section; and the decision in this case was followed by STIRLING, J., with regard to a similar section in a local Act in *West Hartlepool (Mayor, etc. of) v. Robinson* (1897), 61 J. P. 200; 75 L. T. 677; affirmed 62 J. P. 35; 77 L. T. 387; 26 Digest 547, 2448. See also *In re Hanwell U. D. C. and Smith*, and the cases cited therewith, at p. 4417, *ante*.

In *Eccles v. Wirral Rural Sanitary Authority* (1886), 17 Q. B. D. 107; 50 J. P. 596; 26 Digest 534, 2336, MATHEW, J., referring to the judgment of the MASTER OF THE ROLLS in the *Penarth Case*, *ante*, p. 4496, said: "I should have thought that there was much weight in the argument that the Local Government Board could not be treated as a court having exclusive jurisdiction in a case of this kind. It may be that if a party chooses to resort to that tribunal, he should be bound by what it does. But that it should otherwise be conclusive, is opposed to all principle. It is not a court. No procedure is pointed out, and the idea is that the Board are to pronounce what judgment they choose, though opposed to law and principles of equity, so long as they think it equity. That question is well deserving of very careful consideration, and far more elaborate argument than it was necessary to address to us in this case." The court (MATHEW and SMITH, JJ.) left it undecided whether, on a question whether a street was a highway repairable by the inhabitants at large, a frontager could appeal to the L. G. B. under this section; but an appeal on this ground against a demand for payment would certainly be entertained.

An appeal lies under this section in respect of an objection to an apportionment under the Private Street Works Act, 1892, *post*, p. 4488, which is not admissible under s. 7 of that Act, *post*, p. 4853 (*e.g.* failure to apportion according to degree of benefit) (*R. v. Minister of Health, Ex parte Aldridge*, [1925] 2 K. B. 363; 89 J. P. 114; 26 Digest 545, 2433).

It will be observed from s. 257, *ante*, p. 4489, that, where expenses have to be apportioned, an authority are not in a position to serve a notice of demand until the expiration of three months from the service of the notice of apportionment, or if the apportionment is disputed, until such dispute has been settled by arbitration or withdrawn. In cases where a premature demand has been served by an authority and an owner has appealed against it to the M. of H. the Ministry have pointed out that, as the demand was invalid, there was no statutory notice of decision against which any appeal could be made.

An appeal will apparently lie to the Ministry even if an owner has paid the amount claimed in compliance with a demand for same, but the appeal must of course be within twenty-one days of the demand.

**Memorial of
complaint.**

(c) The memorial should be to the Minister of Health, and should be forwarded to the Secretary, Whitehall, S.W.1. It should be signed by the party aggrieved, and should state his case clearly, but as concisely as possible. The Ministry will require to be furnished with all the original notices served upon the appellant endorsed with dates of their receipt. The appellant must not omit to send a copy of his memorial to the authority, and it would be well for him to state in his memorial that he has done so. A failure to comply with this requirement within the twenty-one days will probably result in the Minister's refusing to entertain the appeal. When documents required by the Ministry have been mislaid or destroyed, copies should be obtained from the clerk to the authority. The usual practice of the Ministry is to obtain the observations of the authority upon the memorial (of which they should be in possession of a copy), and then, unless the questions in dispute are of such a character that they can be decided otherwise, to direct one of their inspectors to

hold a local inquiry, at which both the authority and appellant can be present or represented. Upon consideration of the inspector's report an order is issued.

Note to
Section 268.

In *Local Government Board v. Arlidge*, [1915] A. C. 120; 79 J. P. 97; 38 Digest 97, 708, the House of Lords held (reversing *sub nom. R. v. Local Government Board, Ex parte Arlidge*, [1914] 1 K. B. 160; 78 J. P. 25), that the Board, on an appeal to them under the Housing, Town Planning, etc., Act, 1909 (10 Halsbury's Statutes 846), might act upon written evidence, and need neither hear the appellant orally, nor disclose to him the reports and documents placed before them, and further, that the appellant is not entitled to know the name of the official whose decision the Board's order represents. And see hereon *R. v. Housing Tribunal of Appeal*, [1920] 3 K. B. 334; 84 J. P. 252; 38 Digest 97, 709; and *Wilson v. Esquimalt and Nanaimo Rly. Co.*, [1922] 1 A. C. 202; 126 L. T. 451.

(d) As to the powers and duties of the Minister on such appeal, see *R. v. Local Government Board*, *ante*, p. 4496. See also *Cook v. Ipswich L. B.*, *ante*, p. 4410. Where on a demand for payment of paving expenses under s. 150, *ante*, p. 4388, a frontager addressed a memorial stating the grounds of his complaint to be that the works were unnecessary, and were executed improperly and at too high a price, and that it was inequitable to charge him with the whole expenses, and the L. G. B., after a local inquiry confirmed the demand, it was held that on summary proceedings to enforce the payment the frontager might take the objection that the street was a highway repairable by the inhabitants at large (*Seabrooke v. Grays Thurrock L. B.* (1891), 8 T. L. R. 19).

In *Bristol Corporation v. Sinnott*, [1918] 1 Ch. 62; 82 J. P. 9; 26 Digest 525, 2253 (see *ante*, p. 4405), frontagers objecting to a notice under s. 150 presented a memorial to the L. G. B. under this section appealing against a demand for payment on the ground that the time allowed them to carry out the works was unreasonable. The Board after an inquiry intimated that they were prepared to confirm the demand, but the Board made no order, whereupon with the sanction of the Board the appeal was withdrawn. It was held that as no order had been made and the withdrawal of the appeal had been with the Board's sanction the proceedings before the Board did not estop the frontagers from raising the point as to the validity of the notice in an action to recover the amount of the private streets works charges.

It is not the usual practice of the Ministry to furnish either to local authorities or appellants detailed reasons for the Minister's decisions.

(e) It is a question how this Order can be enforced. It is not an Order to which s. 294, *post*, p. 4505, applies. But according to *R. v. Walker* (1875), L. R. 10 Q. B. 355; 40 J. P. 230; 14 Digest 203, 1824, the local authority might perhaps be indicted for a misdemeanor if they disobeyed it; and probably obedience might be compelled by *mandamus*; cf. *R. v. Fulham Guardians*, [1909] 2 K. B. 504; 73 J. P. 397.

Section 295, *post*, p. 4505, provides for the publication of the Order if the Minister should require it to be published.

269. Where any person deems himself aggrieved (a), by any rate made under the provisions of this Act (b), or by any order conviction judgment or determination of or by any matter or thing done by any court of summary jurisdiction (c), such person may appeal therefrom, subject to the conditions and regulations following (d):

Appeal to
quarter
sessions.
[Repealed as
to words in
italics by
47 & 48 Vict.
c. 43, so far
as relates to
an appeal
against an
order or
conviction of
a court of
summary
jurisdiction.]

- (1) The appeal shall be made to the next court of quarter sessions (e) *for the county division or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the court from which the appeal is made:*
- (2) The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or court of summary jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof:

Section 269.

- (3) *The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow :*
- (4) *Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody :*
- (5) *On appeals under this Act against any rate the court of appeal shall have the same power to amend or quash any rate or assessment (f), and to award costs between the parties to the appeal, as is or may by law be vested in any court of quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor (g) ; and the costs awarded by the said court under this Act may be recovered in the same manner in all respects as costs awarded on the last-mentioned appeals (h) : Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the court of appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made (i) :*
- (6) *In the case of other appeals the court of appeal may if it thinks fit adjourn the appeal, and on the hearing thereof may confirm reverse or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just (k) :*
- (7) *The decision of the court of appeal shall be binding on all parties (l), Provided that the court of appeal may, if such court thinks fit, state the facts specially for the determination of a superior court (m).*

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2) *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) See note (b) to P. H. A., 1936, s. 301, *ante*, p. 626.

What
objections
competent.

(b) The only rates now made under this Act are private improvement rates. As to appeals against rates made under the R. and V. A., 1925, *ante*, p. 2113, on grounds not connected with questions of assessments, see s. 14, *ante*, p. 2157. On questions of assessment, the appeal under that Act must be from the decision of the assessment committee (see ss. 31—36 and Sched. V., *ante*, pp. 2185—2193, 2254). A question was raised in *Ricardo v. Maidenhead L. B.* (1857), 2 H. & N. 257 ; 21 J. P. 359 ; 18 Digest 415, 1553, whether an appeal lay against an order of justices ordering payment of a rate which had not itself been appealed against. The court did not decide the question. But the case was decided under the P. H. A., 1848, s. 103 of which enabled justices to enforce a rate by warrant without order. Under

the present Act an order is necessary (see s. 256, *ante*, p. 4484), and there seems to be no reason why an appeal should not lie. It may still be doubted, however, whether on such appeal an objection could be taken which goes to the validity of the rate as distinguished from the jurisdiction of justices to enforce it. In the case of the poor rate, an appeal did not lie against a warrant to enforce payment until the distress thereunder had been levied (*R. v. Lincolnshire JJ.*, [1912] 2 K. B. 413; 76 J. P. 311; 18 Digest 422, 1604). It has been said that on such an appeal an appellant could not avail himself of objections which he might have urged against the rate itself on an appeal against it (*R. v. Kent JJ., Ex parte Roots* (1867), 16 L. T. 672; 18 Digest 422, 1601). The report of this case is very meagre, and *semble* the decision must be taken with some qualification, for it would certainly seem that an objection that a party rated is not an occupier would be open on both appeals. The objections which could be taken before justices when proceedings were taken before them to enforce payment of a poor rate are discussed at 77 J. P. N. 301, 315; and see *R. v. Hannam*; *Bates v. Plumstead (Overseers of)*, and other cases cited therewith at p. 4486, *ante*.

(bb) See concluding paragraph of note (c) to P. H. A., 1936, s. 301, *ante*, p. 627.

(c) For the definition of "court of summary jurisdiction," see *ante*, p. 4345.

There is no appeal against an acquittal; see *ante*, p. 626.

(d) As to procedure on appeal, see note (d) to s. 301 of the P. H. A., 1936, *ante*, p. 627.

(e) Where an adjourned sessions intervened, it was held that the time must be calculated with reference to the first day of the next quarter sessions, and not with reference to the first day of the adjourned sessions (*R. v. Lancashire JJ.* (1876), 40 J. P. 438; 34 L. T. 124; 38 Digest 614, 1392). And see *Rawnsley v. Hutchinson* (1871), L. R. 6 Q. B. 305; 35 J. P. 501; 33 Digest 386, 971. The Criminal Justice Act, 1925, s. 31 now repealed; 11 Halsbury's Statutes 413, avoided these decisions, and see now the Summary Jurisdiction (Appeals) Act, 1933, s. 1, set out at *ante*, p. 627.

The phrase "next sessions" means the next sessions at which an effectual trial can be had after the proper notices have been given. Therefore, where a rate was made on March 20th, and the notices for the next quarter sessions, held on April 6th, must have been given on March 22nd, it was held that the appeal might be brought at the July quarter sessions without being entered and respite at the April sessions (*R. v. Surrey JJ.* (1880), 6 Q. B. D. 100; 45 J. P. 93; 38 Digest 613, 1386). See also *R. v. Pawlett*, cited *ante*, p. 630.

(f) Therefore, it was held that sessions might quash a rate which showed by the Powers of estimate prefixed to it that it was made for illegal purposes (*R. v. Workop L. B. court* on (1857), 21 J. P. 451); see also *Smith v. Southampton Corporation*, [1902] 2 K. B. 244; appeal. 67 J. P. 5.

(g) As to costs, see *ante*, pp. 630—631.

(h) As to recovery of costs, see *ante*, p. 631.

(i) This provision is the same as that in Poor Rate Act, 1801, s. 1 (14 Halsbury's *Levy of rate* Statutes 491), respecting the poor rate. Under that section it was held that where notwithstanding a rate was reduced on appeal and the person rated had during the appeal paid on standing the unreduced assessment, the overseers might, in subsequent rates, credit him for appeal. the excess paid without an order of sessions (*R. v. Parker* (1857), 7 E. & B. 155; 21 J. P. 549; 38 Digest 607, 1341). And see also as to the construction of the section, *R. v. Kingston JJ.* (1858), E. B. & E. 256; 23 J. P. 5; 18 Digest 399, 1399. See also s. 36, R. and V. Act, 1925, *ante*, p. 2193.

(k) This sub-section and the next are repealed so far as relates to an appeal against an order or conviction of a court of summary jurisdiction by the S. J. A., 1884, s. 6 provisions. (11 Halsbury's Statutes 356), of which substitutes the corresponding provisions of the Summary Jurisdiction Acts.

See hereon *R. v. Goodall*, and other cases cited, *ante*, pp. 630, 631.

(l) The procedure at the hearing of the appeal is regulated by "Baines' Act," now called the Quarter Sessions Act, 1849, as to which see *ante*, p. 631.

(m) A *certiorari* is not now necessary to bring up the case (S. J. A., 1879, s. 40; 11 Halsbury's Statutes 345).

As to the practice as to a case stated by sessions, see *ante*, pp. 631—634.

Section 276.

PART VIII.

ALTERATION OF AREAS AND UNION OF DISTRICTS.

Alteration of Areas.

* * * * *

Local
Government
Board may
invest rural
authority
with powers
of urban
authority.

276. The Local Government Board may, on the application (a) of the authority of any rural district, or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value (b) of such district, or of any contributory place therein, by Order to be published in the London Gazette, or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any (c) of the powers rights duties capacities liabilities and obligations of an urban authority under this Act; and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at and in which such powers rights duties liabilities capacities and obligations are to be exercised and attach: Provided that an Order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

See further as to investing a rural authority with urban powers, the P. H. A. Amendment Act, 1890, s. 5, *post*, p. 4803, and the P. H. A., 1925, s. 4 (2), Vol. V., *post*, and see also the L. G. A., 1894, s. 25 (7), *post*, p. 4907, which provides that the powers of the L. G. B. under s. 276, *supra*, or under any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish, on the application of the parish council of that parish. M. of H. must of course now be read for L. G. B.

A wide general order under the powers of s. 276 and of the L. G. A., 1894, s. 25, *post*, p. 4905, was made by the Minister to take effect as from September 1st, 1931 (Rural District Councils (Urban Powers) Order, 1931; S. R. & O., 1931, No. 580). See *ante*, p. 3287. Under this Order, subject to certain provisos, rural district councils were to have the powers, duties, and liabilities of urban authorities under a large number of sections of this Act and of the P. H. A. Amendment Act, 1890, *post*, p. 4801. In many instances the former provisions are now repealed and re-enacted in the P. H. A., 1936, *ante*, pp. 4 *et seq.*, or elsewhere, but the order is still the authority for a rural district council to exercise the powers of an urban authority under the following sections: s. 26, *ante*, p. 4346 (penalty on unauthorised building under carriage-way of a street); s. 157, *ante*, p. 4432 (byelaws with respect to new streets); s. 158, *ante*, p. 4442 (commencement of works subject to byelaws and removal of works constructed contrary to byelaws); s. 160, *ante*, p. 4443, in so far as it incorporates with this Act the provisions of ss. 69, 70, of the Towns Improvement Clauses Act, 1847, *ante*, pp. 4204, 4206 (removal of future or existing obstructions, projections, etc., obstructing passage along street); s. 164, *ante*, p. 4451 (provision, etc., of public walks and pleasure grounds and their regulation by byelaws); s. 165, *ante*, p. 4457 (provision, etc., of public clocks); and s. 172, *ante*,

p. 4460 (licensing of proprietors, drivers and conductors of horses, etc., standing for hire : byelaws ; licensing of proprietors and persons in charge of pleasure boats and vessels : byelaws). As regards the Act of 1890, *post*, p. 4801, the Order is still the authority for the exercise of powers under the following sections : s. 34, *post*, p. 4811 (erection of hoards, etc., during building operations) ; s. 35, *post*, p. 4812 (repair of cellars, etc., under streets) ; s. 38, *post*, p. 4813 (byelaws for prevention of danger from steam whirligigs and swings and from shooting ranges and galleries) ; s. 39 *post*, p. 4814 (provision, etc., of street refuges, etc.) ; s. 40, *post*, p. 4815 (cabmen's shelters) ; s. 42, *post*, p. 4817 (statues and monuments in streets and public places) ; s. 43, *post*, p. 4817 (planting, etc., by local authority of trees in highways) ; ss. 44, 45, *post*, pp. 4818, 4819 (extension of powers as to public parks, walks, and pleasure grounds) ; and s. 46, *post*, p. 4819 (repair, winding, etc., of public clocks).

The powers under this section were saved by the L. G. A., 1933, s. 272 (2), *ante*, p. 1153, but were excluded by the Road Traffic Act, 1934, s. 23 ; Vol. V. and 27 Halsbury's Statutes 552.

(a) As to how an application for an order should be made, see note (b) to s. 13 (1) of the P. H. A., 1936, *ante*, p. 19.

(b) The poor rate is now absorbed in the "general rate," and this provision must be construed as having reference to the "net annual value" as determined under the R. and V. A., 1925 (s. 69 (2), *ibid.*, *ante*, p. 2233). The valuation list will be in the custody of the rural district council as rating authority.

(c) See note (f) to s. 13 (1) of the P. H. A., 1936, *ante*, p. 20.

* * * * *

Union of Districts.

* * * * *

285. Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining (a) district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district ; moreover two or more local authorities may combine together (b) for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof. All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

Power to execute works in adjoining district, and to combine for execution of works.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) In a colonial case the word "adjacent" was contrasted with the word "adjoining," and was held to include places close to or near, and was not confined to places adjoining (*Wellington (Mayor of) v. Lower Hutt (Mayor of)*, [1904] A. C. 773 ; 44 Digest 148, 158). See also as to the meaning of the word "adjoining," p. 352, *ante*.

The L. G. B. expressed the opinion that in the case of a combination of authorities under s. 285 for the execution of sewerage works of common benefit no sanction on their part was necessary under s. 28 (13 Halsbury's Statutes 638 ; now s. 28 of the P. H. A., 1936, *ante*, p. 84) to the communication of sewers, nor were notices under ss. 32, 54 (13 Halsbury's Statutes 639, 649) necessary, unless the proposed work would lie outside the area of the combining authorities.

This section did not apply to the powers conferred by s. 131 (13 Halsbury's Statutes 678) (now s. 181 of the P. H. A., 1936, *ante*, p. 446) so as to require for their exercise in an adjoining district the consent of the local authority of such district (*Withington L. B. v. Manchester (Mayor, etc. of)*, [1893] 2 Ch. 19 ; 57 J. P. 340 ;

**Note to
Section 285.**
—

38 Digest 199, 346). "The object of s. 285 is to enable the local authority acting under it to do certain things as within their powers which, but for the section, would have been outside their powers. They can do certain things in an adjoining district without the imputation of acting *ultra vires* if they have got the consent of the local authority. But, in my opinion, that has not the effect of making the adjoining district or that portion of it their own district for all the purposes of s. 16 (13 Halsbury's Statutes 633); or, in other words, it does not dispense with the necessity, as between themselves and owners of land or other persons, of observing the requirements that have to be observed with respect to sewers where sewers are made outside the district of the board that is making them" (*per* NORTH, J., in *Jones v. Conway and Colwyn Bay Joint Water Supply Board*, [1893] 2 Ch. 603, at p. 609; 43 Digest 1061, 28), and see note (a), *ante*, p. 27.

(b) As to the union of districts, see P. H. A., 1936, s. 6, *ante*, p. 10, and as to joint committees, s. 9 of the L. G. A., 1933, *ante*, p. 854.

**Advantages
of joint board
over joint
committee.**

When works of magnitude are required for the joint benefit of two or more districts the M. of H. favour the constitution of a joint board under s. 6 of the 1936 Act, rather than a combination under s. 285. A committee have no power of themselves to borrow money or to hold property or to sue or be sued. A joint board, however, is free from these disadvantages, and executes powers independently of the local authorities comprised within the united district. By s. 10 of the 1936 Act, *ante*, p. 15, they are enabled to borrow money, and under *ibid.*, s. 6 (2), *ante*, p. 11, they are a body corporate with power to hold lands for the purposes for which they are constituted. They are also empowered to issue precepts to the local authorities within the united district for the sums to be contributed by such authorities towards the expenses of the joint board, and in case of default to raise sums precepted for under s. 13 of the R. and V. A., 1925, *ante*, p. 2156.

Where a corporation and a district council combined under ss. 131, 285 (13 Halsbury's Statutes 678 and *supra*) to provide a joint hospital, it was held that the salaried clerk of the joint hospital committee held a paid office "under the district council," and was therefore disqualified for membership thereof (*Greville-Smith v. Tomlin*, [1911] 2 K. B. 9; 75 J. P. 314; 33 Digest 10, 14).

Two authorities liable to repair a length of a road in strips agreed to each repair the whole width for half the length:—*Held*, that one of them could not plead this agreement as a defence to an action for not performing its duty on a portion legally repairable by it, but informally transferred to the other (*Gray v. St. Andrews and Cupar District Committees*, [1911] S. C. 266; 26 Digest 386, i).

* * * * *

PART IX.

LOCAL GOVERNMENT BOARD.

Inquiries by Board.

**Power of
Board to
direct
inquiries.**

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction approval or consent is required by this Act.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be necessary for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

These powers in relation to the public health were assigned to the Privy Council by P. H. A., 1858, s. 3, and transferred to the L. G. B. by Local Government Board Act, 1871, *ante*, p. 4319. This passage, therefore, only repeated earlier provisions. It will be seen that certain inquiries are directed by the Act; as to these the M. of H. (successors of the Board) has no discretion. See s. 234, *ante*, p. 4477, and s. 297, *post*, p. 4507. They have, however, a discretion as to other inquiries for the purposes of the Act. See, generally, notes to L. G. A., 1933, s. 290, *ante*, pp. 1170 *et seq.*

**Note to
Section 293.**

294. The Local Government Board may make Orders as to the costs of *inquiries* or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such Order may be made a rule of one of the superior courts of law on the application of any person named therein.

Orders as
to costs of
inquiries.

The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273, and the whole section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

See notes to L. G. A., 1933, s. 290 (5), *ante*, p. 1173.

295. All Orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

Orders of
Board under
this Act.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

Questions of some difficulty have arisen as to the effect of Orders which are alleged to exceed the powers given by this Act, or with respect to which the preliminaries prescribed by this Act have not been strictly complied with. The confirmatory Acts formerly only confirmed the Orders so far as they were authorised by the Acts. In such cases it became important to determine how far the requisite preliminaries were conditions precedent to the validity of the Order although confirmed by statute. The following cases illustrate these remarks. The General Board of Health made a Provisional Order extending the P. H. A., 1848, to T., a district within which were parts of turnpike roads made under local turnpike Acts. A local sanitary Act also applied to the district, which was altered by this Order, and it was directed that after confirmation of the Order by Parliament, s. 50 of the Towns Improvement Clauses Act, 1847, which forbids trustees of any turnpike road from levying toll within the limits of the special Act, should be incorporated with the sanitary Act. This Provisional Order was confirmed by the statute *so far as authorised by the above Act*. It was held that this part of the Provisional Order was not authorised, and consequently was void. The court considered that toll on the turnpike road was not a matter which came within the scope of the Public Health Act (*Clayton v. Fernwick* (1856), 6 E. & B. 114; 20 J. P. 180; 38 Digest 150, 8). An Order of the General Board of Health rendering the same Act applicable to the borough of T., but excepting the operation of so much of s. 88 as provided for the rating of pasture lands, railways, etc., at a reduced rate, was held to be invalid in respect of this exception (*N. E. Rail. Co. v. Tynemouth (Mayor, etc., of)* (1868), L. R. 3 Q. B. 723; 32 J. P. 822; 38 Digest 151, 17). But where an Order, confirmed by statute, repealed a local Act which created a district rate, but exempted certain property from such rate, and the clause containing the exemption was preserved by such Order, the court held that the Order had no operation with regard to rates imposed by the Public Health Act, for the rating clause of the Act having been repealed, there was nothing to which the exception could apply (*Turner v. Halifax (Mayor of)* (1868), 9 B. & S. 623, n.; 38 Digest 151, 16).

**Note to
Section 295.**

In *Att.-Gen. v. Hamwell U. D. C.*, [1900] 1 Ch., at p. 56; 63 J. P., at p. 825, in dealing with an argument that this section was conclusive as to the jurisdiction of the L. G. B. to make an Order under s. 175 (13 Halsbury's Statutes 699), directing land to be applied to purposes inconsistent with the purpose for which it was originally acquired, KEKEWICH, J., after citing this section, said: "But that does not prevent the court from considering the question of jurisdiction. It cannot be intended that an Order of the L. G. B. made without jurisdiction is to be held conclusive in a court of justice. It must be the duty of the court to inquire whether the Order could properly be made. If it could properly be made, it would be conclusive under s. 295, though there might be some irregularities about it, and though perhaps it ought not to have been made." On appeal, this part of the judgment was not questioned, and the decision on the main point was affirmed ([1900] 2 Ch. 377; 33 Digest 8, 1). See also *Baroness Wenlock v. River Dee Co.* (1888), 38 Ch. D. 534.

In *R. v. Robinson* (1851), 17 Q. B. 466; 15 J. P. 402; 37 Digest 202, 7, it was held that an order of the Poor Law Commissioners (whose powers are now vested in the Minister of Health) might be quashed in part on *certiorari* if the parts were sufficiently divisible. But see s. 262, *ante*, p. 4492.

See a discussion on the conclusiveness of orders of the L. G. B. made under s. 33 of the L. G. A., 1894 (10 Halsbury's Statutes 798; now repealed), and as to the right to make an amending Order (*Jones v. Lewis*, [1919] 1 K. B. 328; 83 J. P. 61; 21 Digest 161, 219).

As to the force and effect of departmental orders which affect the rights of property, see *Frewin v. Lewis* (1837), 9 Sim. 66; *Foster v. Dodd* (1866), L. R. 1 Q. B. 475; (1867), L. R. 3 Q. B. 67; 32 J. P. 20; 7 Digest 558, 338. In *Att.-Gen. v. Manchester (Bishop of)* (1867), L. R. 3 Eq. 436, at p. 455; 31 J. P. 516; 19 Digest 458, 3048, STUART, V.-C., quoted the following passage from the judgment of COTENHAM, L.C., in *Frewin v. Lewis*, *supra*, as laying down the rule of law: "I apprehend that the limits within which the court interferes with the acts of public functionaries constituted like the Poor Law Commissioners are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by the law, this court will not interfere to see whether any alteration or regulation which they may direct is good or bad; but if they are departing from that power which the law has vested in them—if they are assuming to themselves a power over property which the law does not give them—this court no longer considers them as acting under the authority of their commission, but treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority." See also *Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559; 42 Digest 5, 17.

For a case where an award of partition was disregarded as being made without jurisdiction notwithstanding s. 105 of the Inclosure Act, 1845 (2 Halsbury's Statutes 490), see *Jacomb v. Turner*, [1892] 1 Q. B. 47; 22 Digest 277, 2638.

Where a statute authorised the making of rules and orders, and declared that they should have effect as if enacted in the Act, but should be laid before Parliament, and if either House so resolved within 60 days should be annulled, it was held that a court could not consider whether Orders so made and not annulled were *ultra vires* (*Patent Agents' Institute v. Lockwood*, [1894] A. C. 347; 42 Digest 613, 139); and see *Re London and General Bank* (1894), 38 Sol. Jo. 682. The decision in the Patent Agents' Institute case was distinguished in *Waterford Corporation v. Murphy*, [1920] 2 I. R. 165, which dealt with byelaws whose scope was limited, and it was held that the limit had been exceeded. See also *per* YOUNGER, L.J., in *R. v. Electricity Commissioners*, [1924] 1 K. B. 171, at p. 212; 88 J. P. at p. 19; Digest Supp.; *R. v. Minister of Health, Ex parte Yaffe*, [1930] 2 K. B. 98; 94 J. P. 98.

Where an Act declares that an Order made under it shall be final and have effect as if enacted in the Act, and that confirmation by the L. G. B. or M. of H. shall be conclusive evidence that the requirements of the Act have been complied with, and that the Order has been duly made and is within the powers of the Act, the courts cannot interfere if some requirement has not been complied with (*Ex parte Ringer* (1909), 73 J. P. 436; 25 T. L. R. 718; 42 Digest 2, 1; *R. (Eustace) v. Local Government Board* (1910), 44 Ir. L. T. 176, not following *R. (Whyte) v. Local Government Board* (1909), 43 Ir. L. T. 216); and see *R. v. L. G. B. for Ireland*, [1917] 2 I. R. 454. Where a resolution of the local authority did not require the confirmation of the

department and the Act provided that the effect should be as if the order had been confirmed so that the resolution was to have effect as if enacted in the Act and to be deemed to be duly made and within the powers of the Act, the court refused to give any decision on the law and relied on the facts of the case (*Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559; 42 Digest 5, 17).

**Note to
Section 295.**

An Order of the L. G. B. made under s. 276, *ante*, p. 4502, declared s. 150 of the Act, *ante*, p. 4388, to be in force as to a particular road, which road the Order purported to declare to be a "street." It was held that the matter to which it referred was, first, the application of s. 150 (among other sections) to the so-called street; and, secondly, the investing of the rural authority with the powers of an urban authority, so far as regards the so-called street, but that the mere description of the road as a street in the Order could not make it one if it was not one in fact (*Fenwick v. Croydon Union Rural Sanitary Authority*, [1891] 2 Q. B. 216; 55 J. P. 470; 38 Digest 150, 10). See also *Att.-Gen. v. Hanwell U. D. C.*, *ante*, p. 4506.

Besides other modes of enforcing such Orders, they may be enforced under certain circumstances by *mandamus*, and perhaps by indictment. See *R. v. Walker* (1875), L. R. 10 Q. B. 355; 40 J. P. 230; 14 Digest 203, 182*A*.

With regard to defaulting authorities, see s. 299, *post*, p. 4508, and notes thereto.

* * * * *

Provisional Orders by Board.

297. With respect to Provisional Orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made :

As to
Provisional
Orders made
by Local
Government
Board.

- (1) The Local Government Board shall not make any Provisional Order under this Act unless public notice of the purport of the proposed Order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such Provisional Order relates :
- (2) Before making any such Provisional Order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid, and at which all persons interested shall be permitted to attend and make objections :
- (3) The Local Government Board may submit to Parliament for confirmation any Provisional Order made by it in pursuance of this Act, but any such Order shall be of no force whatever unless and until it is confirmed by Parliament :
- (4) If while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to such Order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills :
- (5) Any Act confirming any Provisional Order made in pursuance of any of the Sanitary Acts or of this Act, and any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed altered or amended by any Provisional Order made by the Local Government Board and confirmed by Parliament :

- Section 297.** (6) The Local Government Board may revoke, either wholly or partially, any Provisional Order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the Order is pending in either House of Parliament :
- (7) The making of a Provisional Order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such Provisional Order have been complied with :
- (8) Every Act confirming any such provisional Order shall be deemed to be a public general Act.

For notes on this section, see notes to s. 285 of the L. G. A., 1933, *ante*, pp. 1165 *et seq.*

Costs of
Provisional
Orders.

298. The reasonable costs of any local authority in respect of Provisional Orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act, by the local authority interested in or affected by such Provisional Orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

For notes on this section, see notes to s. 285 (2) of the L. G. A., 1933, *ante*, pp. 1167, 1168.

*Power of Board to enforce Performance of Duty by Defaulting
Local Authority.*

Proceedings
on complaint
to Board of
default of
local autho-
rity.

299. Where complaint (a) is made to the Local Government Board that a local authority has made default in providing their district (b) with sufficient sewers, or in the maintenance of existing sewers (c), or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost (d), or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce (e), the Local Government Board, if satisfied, after due inquiry (a), that the authority has been guilty of the alleged default, shall make an Order (f), limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the Order, such Order may be enforced by writ of mandamus (g), or the Local Government Board may appoint some person to perform such duty (h), and shall by Order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the Order, together with the costs of the proceedings, shall be paid by the authority in default; and any Order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench (i), and be enforced in the same manner as if the same were an order of such court (k).

Any person appointed under this section to perform the duty of a **Section 299.** defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) the powers of levying rates; and the Local Government Board may from time to time by Order change any person so appointed (*h*).

This section has been repealed for a number of purposes. In so far as it relates to district (including non-county borough) councils it was repealed by the L. G. A., 1929, s. 57 (4), and Sched. XII., Pt. IV.; Vol. V. and 10 Halsbury's Statutes 923, 1016, and s. 57 (3) of that Act contained provisions for enforcing the performance of a function in respect of which a district council is in default. The new subsection was wider in its scope than the provision in the text since it dealt with any default "in providing their district or any part thereof with a sewerage system or sewage disposal works or an adequate supply of water, or in discharging any other function relating to public health which it is their duty to discharge." Where the Minister was satisfied under that sub-section that such default had been made he might by order require the function to be performed within a time specified in the order, and in default of compliance with the order transfer the function by order to the county council. Reference should be made to the subsection and notes thereto, *post*, but s. 57 (3) of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 923, has in its turn been repealed (1) as regards functions relating to public health which are functions under the P. H. A., 1936 (see *ibid.*, s. 346, Sched. III., Pt. V., *ante*, pp. 720, 732), and (2) so far as regards functions relating to public health which are functions under the Food and Drugs Act, 1938 (see *ibid.*, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1457).

This section has also been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 728, except so far as is material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

The section in the text now applies only to county boroughs, to which s. 57 (3) of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 923, does not apply, and only to the limited extent now remaining.

(a) As to the complaint, see note (a) to s. 322 of the P. H. A., 1936, *ante*, p. 666.

(b) The complaint need not relate to the district as a whole, though the Minister Meaning of will not make an Order unless an appreciable part of the district is concerned. In "district." the case of the city of Rochester, in which both the complaint and Order referred to "the village of Borstal," it was held by the court that the portion of the city thus described was sufficiently defined and well known, and that the Order should be enforced by *mandamus* (Times, November 22nd, 1892).

Under s. 57 (3) of L. G. A., 1929, an order may be made if any part of the district is not supplied with the services referred to therein.

(c) The duty of a local authority to provide and maintain sewers is not now a function under this Act. It will be seen that a complaint cannot be sustained under s. 299 that a local authority have failed to provide sewers for the purpose of carrying off liquid trade refuse. It will be observed also that no reference is made to works of sewage disposal. Therefore, mere failure to provide proper works for the purification of sewage cannot be the subject of complaint under this section. Procedure under the Rivers Pollution Prevention Acts is usually appropriate in such cases. Section 57 (3) of the L. G. A., 1929, does refer specifically to sewage disposal works, but, as pointed out above, that subsection has no application to county boroughs.

(d) As to complaints in regard to water supply, see note, *ante*, p. 666.

(e) See note, *ante*, p. 666.

(f) This order is in itself binding and conclusive: see s. 295, *ante*, p. 628. It The Order. must be directed to and served upon the defaulting authority. The obtaining of such an order does not prevent the person, who has obtained it for the purpose of putting an end to a nuisance, from proceeding by action for an injunction to restrain the continuance thereof (*Whitefield v. Newquay L. B.* (1882), 72 L. T. Jo., p. 349).

It was formerly held that a refusal by the department to make an order might be considered by the court sufficient to justify their refusing a *mandamus* if a com-

Note to Section 299. — plainant applied directly for the writ (*R. v. Tottenham L. B.* (1893), 9 T. L. R. 414; 41 Digest 23, 181); but according to the decision of the House of Lords in *Pasmore v. Oswaldtwistle U. D. C.*, ante, p. 667, a complainant cannot go to the court at all.

Mandamus.

(g) In several cases a writ of *mandamus* was obtained by the L. G. B. Upon an application for a writ, the court do not inquire whether there has been a due inquiry under this section. The court is bound to grant the writ at the request of the department, unless there has been some legal error or some omission to apply the ordinary legal procedure (*R. v. Staines Union, R. v. Staines L. B.* (1893), 58 J. P. 182; 62 L. J. Q. B. 540; 38 Digest 153, 36). The writ against the Staines local board was afterwards made peremptory, notwithstanding a return that the local board required time to prepare a scheme and estimate for obtaining the necessary funds (*R. v. Staines L. B.*, Times, February 27th, 1894). A fresh *mandamus* was asked for after the passing of the L. G. A., 1894, post, p. 4892, against the successors of the local board, and the rule was eventually made absolute (*R. v. Sunbury-on-Thames U. D. C.*, Times, June 4th and July 20th, 1896).

Upon application of the L. G. B. a peremptory writ of *mandamus* issued to the W. corporation requiring the execution of certain sewerage works. The writ being disobeyed, writs of attachment against certain members of the council were ordered to issue, but to lie in the office for a specified period, which was extended from time to time. The corporation afterwards asked that, having satisfied the L. G. B. that the works were in process of execution with due diligence, the time should be still further extended. The court, being satisfied that the work was being diligently carried on, ordered the writs to remain in the office for an unspecified period, the matter to stand over generally with liberty to apply (*R. v. Worcester Corporation* (1905), 69 J. P. 296; 3 L. G. R. 468; 16 Digest 346, 1728).

(h) The alternative procedure open to the Minister of Health under the section—of appointing some person to perform the duty—is never adopted by him, and was not favoured by the L. G. B.

(i) Now the King's Bench Division of the High Court of Justice.

(k) Under the corresponding enactment in Sanitary Act, 1866, s. 49, an order was made that "the said authority do its duty, and begin to set about the works for the purpose within one month from the date of this order, and proceed therewith until completion." After the month, the authority having done nothing, a second order was made appointing J. B. to perform the said duty of the authority as he should be directed. It was held that the two orders were justified by the section (*R. v. Cockerell* (1871), L. R. 6 Q. B. 252; 35 J. P. 693; 38 Digest 153, 30). It was also held that it was not necessary to provide for the expenses in the latter order.

As to the enforcing of the Order, see Judgments Act, 1838, s. 18 (10 Halsbury's Statutes 23), and the R. S. C., Order XLII., r. 31, which enables an order against a corporation to be enforced by sequestration or attachment. See also the next section.

Further provision for recovery of expenses.

300. Any sum specified in an Order of the Local Government Board for payment of the expenses of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by Order empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the Order) as may, in the opinion of the Local Government Board, be sufficient to defray

the debt so due from the defaulting authority, and all expenses incurred **Section 300.**
in consequence of the nonpayment of such debt.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the Order, shall pay the surplus, if any, (the amount to be ascertained by the Local Government Board), to or to the order of the defaulting authority.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purpose of any unrepealed enactment in this Act or any enactment directed to be construed herewith. It was previously repealed in so far as it applied to district (including non-county borough) councils (s. 57 (4) and Sched. XII., Pt. IV., L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 923, 1016). It therefore only now applies to county borough councils and is practically inoperative. See note (h) to s. 299, *ante*, p. 4510. As to rates see now the R. and V. A., 1925, *ante*, p. 2113.

301. The Local Government Board may from time to time certify the amount of expenses that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority; also, the amount of any loan required to be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred; and the certificate of the said Board shall be conclusive as to all matters to which it relates.

Power of Board to borrow to defray expenses of performing duty of defaulting authority.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security; and the Local Government Board, or the person so appointed, may, by any instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith. It was previously repealed in so far as it applied to district (including non-county borough) councils (s. 57 (4) and Sched. XII., Pt. IV., L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 923, 1016). It therefore only now applies to county borough councils and is practically inoperative. See note (h) to s. 299, *ante*, p. 4510. The local rate is now the general rate, see the R. and V. A., 1925, *ante*, p. 2113.

302. Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority,

Recovery of principal and interest.

Section 302. and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act.

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

"Expenses," for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the Order of the Local Government Board, or the person appointed by that Board.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith. It was previously repealed in so far as it related to district (including non-county borough) councils (s. 57 (4) and Sched. XII., Pt. IV., L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 923, 1016). It now therefore only applies to county borough councils and is practically inoperative. See note (h) to s. 299, *ante*, p. 4510.

Powers of Board in relation to Local Acts, etc.

Power to
repeal and
alter local
Acts.

303. The Local Government Board may, on the application of the local authority of any district, by Provisional Order, wholly or partially repeal alter or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject-matters as this Act.

Any such Provisional Order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such Order included in or excluded from such district.

This section was applied with amendments by s. 317 of the P. H. A., 1936. For notes to that section, *ante*, pp. 662—3.

Settlement
of differences
arising out
of transfer of
powers
or property
to local
authority.

304. On the application of any authority from whom or to whom any powers rights duties capacities liabilities obligations and property, or any of them, are at any time transferred or alleged or claimed to be transferred in pursuance of this Act, or any Provisional Order made thereunder, or on the application of any person (a) affected by such transfer, the Local Government Board may by Order (b) settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers rights duties capacities liabilities obligations or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any Order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that

where any such Order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such Order shall be provisional only until it has been confirmed by Parliament (c). Section 304.

Any settlement or adjustment under this section may be included in any Provisional Order which gives rise to the same.

As alterations of boundary are not now made under the powers of this Act, the present section may be regarded as superseded as regards urban and rural districts. Joint Boards still come under the section.

(a) The L. G. B. declined to entertain questions of disputed liabilities or disputed accounts between local authorities and contractors, considering that such disputes and questions should be settled by arbitration or in a court of law. It is to be observed that this section did not constitute the Board the sole tribunal for any of the disputes to which the section refers. In this respect it differs from the local Act in question in *Bexley L. B. v. West Kent Sewerage Board* (1882), 9 Q. B. D. 518; 46 J. P. 519; 2 Digest 460, 1063. In that case the sewerage board was incorporated by a local Act (West Kent Main Sewerage Act, 1875), of which s. 93 enacted that if any difference should arise between the board on the one hand and any constituted authority on the other hand, or between any two or more constituted authorities, or between any constituted authority and any parish or person, respecting any assessment of a main sewer rate, or any determination of the board, or any controversy or other matter under the Act, the same should by virtue of the Act stand referred for decision to the L. G. B., whose decision thereon and with reference to the cost of the reference was to be final and binding. A dispute having arisen between the sewerage board and the Bexley L. B. respecting a claim made by the latter for compensation for damage done to the highways, etc., of the district, the disputants, with the consent of the L. G. B., stated a case for the opinion of the Queen's Bench Division. It was held that it was not competent for them to do so, the L. G. B. being by s. 93 constituted the tribunal, whose decision on the matter was to be final and binding, and the statement of the case not being a submission to arbitration within the meaning of the Common Law Procedure Act, 1854, s. 5 (13 Halsbury's Statutes 176), which applied only to compulsory references under the Act, or to references by consent of parties where the submission was or might be made a rule of court.

See also notes to s. 180, *ante*, p. 4464.

(b) See as to this Order s. 295, *ante*, p. 4505.

(c) See s. 297, *ante*, p. 4507, for other orders of adjustment.

PART X.

MISCELLANEOUS AND TEMPORARY PROVISIONS.

Miscellaneous.

305. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises for the purpose (a) of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries (b), and the owner or occupier of such lands or premises refuses to permit the

Entry on
lands for
purposes of
Act.

Section 305. same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice (c) to such owner or occupier, apply to a court of summary jurisdiction (d) for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them.

If no sufficient cause is shown against the application the court may make an order accordingly (e), and on such order being made the local authority or any of their officers (f) may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency (g), no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

Purposes of entry.

(a) Care must be taken not to claim an entrance for any purpose not specified here. An entrance for the purpose of examining drains and privies, as to nuisances, and as to unsound meat, etc., can be obtained under other Acts. See also the power of entry given by the Lands Clauses Consolidation Act, 1845, s. 84, *ante*, p. 4135, which may be incorporated herewith by Provisional Order; and the provision in the next section for the admission of owners by occupiers to execute works.

Semble this section does not enable an authority to obtain an order in the case of an owner's refusal to permit an entry for purposes connected with the laying of a sewer (*Lamacraft v. St. Thomas R. S. A.* (1880), 44 J. P. 441; 42 L. T. 365; 41 Digest 23, 175). See what is said hereon at p. 28, *ante*, and see also *Diss Urban Sanitary Authority v. Aldrich*, *ante*, p. 581. In *Wheatcroft v. Matlock L. B.* (1885), 52 L. T. 356; 38 Digest 117, 840, DENMAN, J., thought that the section would not apply where a landowner has refused to permit an authority to enter his land for the purpose of covering in or otherwise improving a sewer under ss. 18 and 19 (13 Halsbury's Statutes 634; now ss. 22, 31 of the P. H. A., 1936, *ante*, pp. 67, 102). In *Robinson v. Sunderland Corporation*, *ante*, p. 581, CHANNELL, J., expressed the opinion that the words "for the purpose of doing works which they have statutory authority to do" may be read into s. 305, but the attention of the court was not called to *Wheatcroft v. Matlock L. B.*, or *Lamacraft v. St. Thomas R. S. A.*, *supra*.

Fixing and ascertaining boundaries.

(b) It does not appear that the local authority have any power to fix boundaries, but the power to enter to ascertain boundaries may perhaps be exercised for the purposes of Part VI. of the L. G. A., 1933, *ante*, pp. 920 *et seq.*

Notice.

(c) As to the authentication and service of this notice, see ss. 266, 267, *ante*, p. 4494.

(d) See the definition, *ante*, p. 4345.

Authority for officer.

(e) On the question what is "sufficient cause," see note, *ante*, p. 581.

(f) The officer should be provided with some authority from the council.

Case of emergency.

(g) The person who enters must determine at his peril whether the case be one of emergency. Therefore, it will be safest to give notice, unless the emergency is obvious.

Penalty on obstructing execution of Act.

306. Any person who wilfully obstructs (a) any member of the local authority, or any person duly employed in the execution of this Act, . . . shall, . . . be liable for every such offence to a penalty not exceeding five pounds (b).

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing (c), require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making (d) of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance (e).

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the court for his refusal) be liable to a penalty not exceeding five pounds (e).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith. Certain words in the first paragraph were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273.

(a) As to what amounts to "obstruction," see note (a) to s. 288 of the P. H. A., 1936, *ante*, p. 582.

(b) As to the recovery of this penalty, see s. 251, *ante*, p. 4481. It is not necessary that the justices should be acting for the petty sessional division in which the matter of complaint arises. See *R. v. Brodhurst* (1863), 27 J. P. 580; 33 Digest 308, 276. See also note (d) under s. 251, *ante*, p. 4482.

The defendant is not necessarily entitled to have the case dismissed because the obstruction took place in assertion of a claim of right, nor are the justices for that reason alone justified in refusing as frivolous an application for a special case (*R. v. Pollard* (1866), 14 L. T. 599; 38 Digest 173, 161).

(c) See the Form E. in Sched. IV., *post*, p. 4523, which recites the issue of a summons to the party complained of, and his failure to show sufficient cause against the order.

(d) In Nuisances Removal Act, 1855, s. 37, *service* was substituted for *making* in P. H. A., 1848, s. 16. It is, perhaps, to be regretted that there has been this change. The order may be made in the absence of the occupier or without his knowledge, and the time may run from an act of which he knows nothing, whereas he could not have pleaded ignorance of the service.

(e) See as to the recovery of this penalty, s. 251, *ante*, p. 4481.

* * * * *

308. Where any person sustains any damage (a) by reason of the exercise of any of the powers of this Act (b), in relation to any matter as to which he is not himself in default (c), full compensation shall be made to such person by the local authority exercising such powers (d); and any dispute as to the fact of damage or amount of compensation (e) shall be settled by arbitration in manner provided by this Act (f), or if the compensation claimed does not exceed the sum of twenty pounds, the same may, at the option of either party (g), be ascertained by and recovered before a court of summary jurisdiction (h).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed

**Note to
Section 308.**

enactment in this Act or any enactment directed to be construed herewith. Previously it had been superseded to some extent by the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213, *e.g.*, the laying of a sewer in private land was held in *Thurrock Grays and Tilbury Joint Sewerage Board v. Thames Land Co., Ltd.* (1925), 90 J. P. 1; 23 L. G. R. 648; Digest Supp., to be a compulsory acquisition of "land" because by s. 12 (2) of that Act, *post*, p. 5220, "land" includes any interest in land and any easement or right in, to, or over land, and accordingly compensation had to be assessed under the Act of 1919.

The section is applied to county councils by s. 39 of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 913, in cases in which a public utility undertaking suffers damage by reason of the exercise of functions by a county council in relation to a road vested in them by Part III. of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 903, which before the road became so vested were only exercisable in relation thereto by a district council under this Act.

(a) As to what damage is included, see note (e) to s. 278 of the P. H. A., 1936, *ante*, pp. 558—562.

(b) As to what amounts to the exercise of the powers of the Act, see note (f) to s. 278 of the P. H. A., 1936, *ante*, pp. 562—565.

(c) See note (g) to s. 278 of the P. H. A., 1936, *ante*, p. 565.

(d) For notes as to what is "full" compensation, see note (c) to s. 278 of the P. H. A., 1936, *ante*, pp. 557, 558.

(e) For notes as to the jurisdiction of the arbitrator, see notes to P. H. A., 1936, s. 278 (2), *ante*, p. 566.

Arbitration.

(f) See s. 179, *ante*, p. 4461. But in cases where that Act applies, see now the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213.

**Option for
summary
process.**

(g) This statement of the option was new. It is not quite clear how it is to be determined. The authority do not seek to recover any amount, and if the claimant decline to go before the justices, it is difficult to see how he can be compelled to do so; but, if he select that court, the authority must follow. This option will not be open in any case which comes within the above-mentioned Act of 1919.

**Court of
summary
jurisdiction.**

(h) See s. 251, *ante*, p. 4481. The justices may add to the compensation the costs of the application to them (*Huddersfield Corporation v. Shaw* (1890), 54 J. P. 724).

**Compensa-
tion in
certain cases
to officers.**

309. If any officer of any trustees commissioners or other body of persons entrusted with the execution of any local Act, whether acting exclusively under the local Act, or partly under the local Act and partly under the Local Government Acts (a), or any officer of any sanitary authority under the Sanitary Acts (b) by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any Provisional Order made in pursuance of either of those Acts (c), removed from his office, or deprived of the whole or part of the emoluments (d) of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may (e) by order award to such officer such compensation as the said Board may think just (f); and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district.

**Local Govern-
ment Acts.**

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith. It had

previously been practically superseded by the L. G. A., 1888, s. 120, and the L. G. A., 1894, s. 81 (7), *post*, p. 4923.

**Note to
Section 309.**

(a) See the definition in Sched. V., Part 1, *post*, p. 4526.

(b) See the definition in s. 4, *ante*, p. 4344.

(c) See s. 303, *ante*, p. 4512.

(d) As to what are "emoluments," and who is an "officer" within the meaning of the section, see the cases collected under definitions in L. G. A., 1933, s. 305, *ante*, pp. 1185, 1191.

Sanitary
Acts.

Provisional
Orders.

Emoluments.

(e) But *semble* the section "entitled" the officer to compensation (*R. v. Local Government Board* (1874), L. R. 9 Q. B. 148; 38 J. P. 165; 38 Digest 139, 1036).

(f) Prior to 1909 it was usual for the Board in fixing compensation to follow the Treasury "practice"—as to which see notes to the L. G. A., 1894, s. 81 (7).

Awards of
compensa-
tion.

Most of the officers appointed under this Act held office at the discretion of the local authority, nevertheless the Board considered them, as a general rule, officers entitled to compensation for a reasonable term. See *R. v. Norwich Corpn.* (1838), 8 Ad. & El. 633; *R. v. Poor Law Board* (1871), L. R. 6 Q. B. 785; 36 J. P. 327; 38 Digest 140, 1046.

* * * * *

313. Where in any Act, or Order made by one of Her Majesty's Principal Secretaries of State or by the Local Government Board and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts (a) which are repealed by this Act are mentioned or referred to, such Act Order or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same; nevertheless those substituted provisions shall have effect subject to any modification or restriction in such Act Order or document expressed in relation to the repealed provisions therein mentioned or referred to.

Substitution
in other Acts
of provisions
of this Act
for provisions
of repealed
Acts.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any Act directed to be construed herewith.

(a) See the definition in s. 4, *ante*, p. 4344.

The question was raised whether by virtue of an Order of the L. G. B. prior to 1875, which invested a rural sanitary authority with urban powers under the Local Government Act, 1858, with reference to such a matter as byelaws, a rural district council possessed the *additional* powers given by this Act in relation to the same kind of byelaws. The answer was in the affirmative.

* * * * *

316. In the construction of the provisions of any Act incorporated with this Act the term (a) "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any Order (b) confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

As to con-
struction of
incorporated
Acts.

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act (c).

Note to Section 316. This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) These terms are found in such incorporated Acts as the Lands Clauses Act, the Waterworks Clauses Act, etc. All the incorporated statutes will be found *ante*.

(b) It would have been more correct to say any Act confirming an Order.

(c) See ss. 251—254, *ante*, pp. 4481—4484.

This provision creates some difficulty. It will be remembered that s. 253, *ante*, p. 4482, provides that no proceedings are to be taken to recover penalties except by a party aggrieved, by the local authority, or by a person having the consent of the Attorney-General. In some cases arising under incorporated Acts the police are authorised by such Acts to arrest offenders and take them before justices. See, for example, the Town Police Clauses Act, 1847, s. 28, *ante*, p. 4226, and *Jobson v. Henderson*, *ante*, p. 624. See, however, the comments on this case in *Sheffield Corporation v. Kitson*, [1929] 2 K. B. 322; 93 J. P. 135; Digest Supp. (*ibid.*).

Construction of Schedules. **317.** The Schedules to this Act shall be read and have effect as part of this Act.

The forms contained in Schedule IV. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

As to the construction and effect of Schedules to an Act see *Att.-Gen. v. Lamplough* (1878), 3 Ex. D. 214; 42 J. P. 356; 42 Digest 607, 84; *Dean v. Green* (1882), 8 P. D. 79; 46 J. P. 742; 42 Digest 608, 89; *Woodward v. Sarsons* (1875), L. R. 10 C. P. 733; 39 J. P. 776; 42 Digest 711, 1279.

The forms in Sched. IV., *post*, p. 4523, need not be followed precisely, but they indicate what the forms used by a local authority shall contain (*Stourbridge U. D. C. v. Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3; 26 Digest 525, 2252); and see also *R. v. Baines* (1840), 12 Ad. & El. 210; 5 J. P. 94; 42 Digest 607, 86; *Bartlett v. Gibbs* (1843), 5 Man. & G. 81; 42 Digest 608, 90; *Rayner v. Stepney Corporation*, [1911] 2 Ch. 312; 75 J. P. 468; 38 Digest 212, 471.

Certain orders made by a court of summary jurisdiction for the abatement of a nuisance under the former s. 96 (13 Halsbury's Statutes 664) were signed and sealed by one only of the justices who were present. Form C. in Sched. 4 (*op. cit.* 774) purports to be under the hands and seals of two justices. It was held that the orders were bad, notwithstanding that the general forms prescribed by the S. J. Rules, 1886, showed a place for the signature of one justice only (*Wing v. Epsom U. D. C.*, [1904] 1 K. B. 798; 68 J. P. 259; 36 Digest 237, 766). But *quære* whether this decision now applies in view of the new S. J. Rules made under s. 40 of the Criminal Justice Administration Act, 1914 (11 Halsbury's Statutes 387), and see as to the power of the court to amend on appeal or *certiorari*, *R. v. Tabrum* (1907), 71 J. P. 325; 97 L. T. 551; 33 Digest 357, 668.

In Ireland it has been held that a majority of the court should authenticate an order (*R. v. Londonderry J.J.*, [1910] 2 I. R. 458).

PART XI.

SAVING CLAUSES AND REPEAL OF ACTS.

Saving Clauses.

* * * * *

327. Nothing in this Act (a) shall be construed to authorise any local authority—

Saving for works and property of certain authorities, and for navigation and water rights, etc.

- (1) To use injure or interfere with any sluices floodgates sewers groynes or sea defences or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown (b), or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining preserving or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (c) ; or,
- (2) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being or in her Majesty's Principal Secretary of State for the War Department for the time being ; or,
- (3) To interfere with any river canal dock harbour lock reservoir or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof (d), in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river canal dock harbour lock reservoir or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof ; or,
- (4) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river canal dock harbour reservoir or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference (e) ; or,
- (5) To interfere with any bridges crossing any river canal dock harbour or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such river canal dock harbour or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof ; or,
- (6) To execute any works in through or under any wharves quays docks harbours or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Section 327. Without the consent in every case of such Lord High Admiral or Commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing (*f*) in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent (*g*). And nothing in this Act shall prejudice or affect the rights privileges powers or authorities given or reserved to any person under such local or private Acts for draining preserving or improving land as are in this section mentioned.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(*a*) See note (*b*) to P. H. A., 1936, s. 333 (1), *ante*, p. 678.

(*b*) Cf. P. H. A., 1936, s. 334, *ante*, p. 682.

(*c*) See *ibid*.

(*d*) See note (*c*) to P. H. A., 1936, s. 333 (1), *ante*, p. 678.

(*e*) See note (*h*) to P. H. A., 1936, s. 333 (1), *ante*, p. 680.

(*f*) See note (*d*) to P. H. A., 1936, s. 333 (1), *ante*, p. 678.

(*g*) See first paragraph of note (*d*) to P. H. A., 1936, s. 333 (1), *ante*, p. 678.

Reference
to arbitration
in case of
works not
within
preceding
section.

328. Where any matters or things proposed to be done by any local authority, and not being within the prohibition aforesaid (*a*), interfere with the improvement of any river canal dock harbour lock reservoir basin or towing-path which any body of persons or person are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river canal dock harbour or basin, or with any land necessary for the enjoyment or improvement thereof, the local authority shall give to such body of persons or person a notice (*b*) specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration; and the following questions shall be decided by such arbitration (*c*); (that is to say,)

- (1) Whether the matters or things proposed to be done by the local authority will cause any injury to such river canal dock harbour basin towing-path works or land, or to the enjoyment or improvement of such river canal dock harbour or basin as aforesaid:
- (2) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being fully compensated by money (*d*).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(*a*) It is not easy to say what are the matters or things referred to, for the previous section appears to prohibit almost all acts without consent; but it is contemplated

that there may be some acts which do not come within the prohibition, and then this section provides for dealing with them.

Note to
Section 328.

It will be seen that the section refers to companies or persons authorised to act by some Act of Parliament, but such Act need not be a private or local statute.

(b) See ss. 266, 267, *ante*, pp. 4494—5, as to authentication and service of notices.

(c) See s. 179, *ante*, p. 4461.

(d) Note the object of this inquiry, namely *full* compensation. That may be obtained by a money payment, or it may be that such payment will not be adequate; it may be necessary that some work should be executed, and the arbitrator is to determine this question.

This section does not contemplate that the arbitrator shall ascertain the amount of compensation for the injury, if any be experienced, but the next section does.

329. The result of any such arbitration shall be final, and the local authority shall do as follows (a); (that is to say.) Effect of arbitration.

- (1) If the arbitrators (b) are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:
- (2) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation (c); and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things:
- (3) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given (d).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

(a) This section and the preceding section are expressed with some little inaccuracy. First, it is stated in s. 328, *ante*, p. 4520, that two questions are to be submitted to the arbitrators, and then in this section it is shown that another question may be submitted to and decided by them. Again, this section states that the authority shall *do as follows*, and having required the arbitrators in a certain event to do a particular act, it empowers the authority to proceed; then afterwards, upon a decision of the arbitrators to a certain effect, it prohibits the authority from acting.

(b) It is presumed that the word *arbitrators* includes umpires. See s. 180 (7), *ante*, p. 4463.

(c) It would have been better to provide for compensation after the works have been completed and the amount of the damage actually ascertained, inasmuch as the estimate of the arbitrators may prove too high or too low; it is clear, however, that the payment is here made a condition precedent to the execution of the works.

(d) This will not prevent the local authority from negotiating with the party referred to for the execution of such works as will remove the objection which cannot be fully compensated with money.

* * * * *

340. Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted (a) at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications: Saving for proceedings under local Acts.

- Section 340.** (1) That no person shall be punished for the same offence both under a local Act and this Act ; and
- (2) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act (b).

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or in any enactment directed to be construed herewith.

(a) See notes to P. H. A., 1936, s. 328, *ante*, p. 673.

(b) See *ibid*.

Powers of
Act to be
cumulative.

341. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament law or custom, and such other powers may be exercised in the same manner as if this Act had not passed ; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.

See notes to P. H. A., 1936, s. 328, *ante*, pp. 673, 674.

* * * * *

Repeal of Acts.

Repeal of
Acts in
Schedule V.

343. *The Acts specified in the first and second parts of Schedule V. to this Act are hereby repealed to the extent in the third column in the said parts of that schedule mentioned, with the following qualification ; (that is to say,)*

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect (a)—

- (a) *Anything duly done or suffered under any enactment hereby repealed (b) ; or*
- (b) *Any right or liability (c) acquired accrued or incurred under any enactment hereby repealed ; or*
- (c) *Any security given under any enactment hereby repealed ; or*
- (d) *Any penalty forfeiture or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or*
- (e) *Any investigation legal proceeding or remedy in respect of any such right liability security penalty forfeiture or punishment as aforesaid ; and any such investigation legal proceeding and remedy may be carried on as if this Act had not been passed.*

The italicised words were repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014).

Note to
Section 343.

(a) See the similar provision in the Interpretation Act, 1889 (*op. cit.* 992).

(b) The P. H. A., 1848, s. 72, required certain notices to be given to the local board before laying out, making, or building upon any new street. This provision was repealed by Local Government Act, 1858, except (s. 9) as to "proceedings, matters, and things respectively begun or made" under any section of the former Act:—*Held*, that where the proper notices had been given and plans lodged, this was a matter or thing *begun or made* within the last-mentioned section, although little or nothing appeared to have been done towards the formation of the streets of which notice had been given (*Felkin v. Berridge* (1863), 15 C. B. (N. S.) 257; 27 J. P. 776; 38 Digest 176, 189). The same view was taken in regard to similar clauses in byelaws in *Withington U. D. C. v. Moore* (1896), 60 J. P. 408; 38 Digest 191, 290, by HALL, V.-C., in the Lancaster Palatine Court. See, however, *White v. Sunderland Corporation and Harrogate Corporation v. Dickinson*, cited at p. 4440, *ante*.

A notice was given by a local board of intention to make a rate under the sanitary Acts, and the estimate was deposited, but before the notice expired this Act was passed. The local board, not being aware of the repeal, made a rate purporting to be made under the repealed Act. It was held that the notice was a thing done within this proviso, and that the reference to the repealed Act was immaterial (*R. v. West Riding J.J.* (1876), 1 Q. B. D. 220; 40 J. P. 820).

(c) Where justices had made an order to abate a smoke nuisance, and prohibited its continuance under Nuisances Removal Act, 1855, before the passing of this Act, it was held that the defendant thereby incurred a *liability* which was continued by this section, so as to be subject to a penalty for allowing the smoke to continue after the passing of this Act (*Barnes v. Eddleston* (1876), 1 Ex. D. 102; 40 J. P. 663; 36 Digest 238, 772).

But where under the repealed enactment a liability has been incurred for penalties, proceedings to recover such penalties cannot be brought after the time limited by the S. J. A., 1848, s. 11, in cases to which that enactment applies (*R. v. Chur* (1897), 67 L. J. Q. B. 36; 77 L. T. 439; 34 Digest 538, 34).

SCHEDULES.

SCHEDULE IV.

FORMS.

(As to the use of these forms see s. 317, *ante*, p. 4518. The only forms remaining unrepealed are Forms E, F, G, and K, and these too are repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. I. (2), *ante*, pp. 720, 729, except so far as may be material for the purposes of any unrepealed enactment in this Act or any enactment directed to be construed herewith.)

FORM E.

Form of Order to permit Execution of Works by Owner (a).

County of _____ } WHEREAS complaint hath been made to me, E. F., Esquire,
[or borough, etc.], } one of Her Majesty's justices of the peace in and for the county
to wit. } [or borough, etc.] of _____ by A. B., owner, within the meaning

Forms.

of the Public Health Act, 1875, of certain premises [*describe situation of premises so as to identify them*], that C. D., the occupier of the said premises, doth prevent the said A. B. from obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said C. D. doth prevent the said A. B. from [*here describe the works generally, according to circumstances, for instance, thus* : constructing and laying down, in connection with the said house, a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of are entitled to use, such sewer being within one hundred feet of the said premises] : And whereas the said C. D., having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said A. B. to obey and carry into effect the provisions of the said Act, I do hereby order that the said C. D. do permit the said A. B. to execute the same in the manner required by the said Act.

Given under my hand and seal, this day of 18 .
J. S. (L.S.)

FORM F.

WHEREAS [describe the local authority] have by their officer [naming him] made application to me, A. B., one of her Majesty's justices of the peace having jurisdiction in and for [describe the place], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [describe situation of premises so as to identify them], for the purpose of [describe the purpose, as the case may be], and that such demand has been refused.

Now, therefore, I, the said A. B., do hereby require you [name the person having custody of the premises], to admit the said [name the local authority], [or the officer of the said local authority], to the said premises, for the purpose aforesaid.

Given, etc. [as in last form].

FORM G.

Form of Notice requiring Owner to Sewer, etc., Private Street (a).

To the owner of certain premises fronting, adjoining, or abutting on a certain street called _____ within the district of [describe the local authority].

Whereas the said street is not sewered levelled paved flagged and channelled to the satisfaction of the above-named [local authority]; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered levelled paved flagged and channelled: Now, therefore, the said [local authority], hereby give you notice (in pursuance of the Public Health Act, 1875), to sewer level pave flag and channel the same within the space of [state the time] (b), from the date hereof, in manner following; (that is to say), the sewers to be laid or made [here describe the mode to be adopted and material to be used], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the [local authority].

Each gully for surface draining, and its connection with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

Schedule 4.

Forms.

The channel stones to be [here describe the mode to be adopted and the material to be used]. The curb or side stones to be [here describe the mode to be adopted and the material to be used].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the [local authority], situate in street in aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said [local authority], or their surveyor.

Dated this day of 18 .

(Signed)

Clerk to the said [local authority].

(a) See s. 150, *ante*, p. 4388, and s. 317, *ante*, p. 4518. This form need not be followed precisely, but particulars of the work to be done must be given, and the deposited plans must be referred to (*Stourbridge U. D. C. v. Butler and Grove*, [1909] 1 Ch. 87; 73 J. P. 3).

(b) See note (hh) to s. 150, *ante*, p. 4405, and *Macclesfield Corporation v. Macclesfield Grammar School*, [1921] 2 Ch. 189, where RUSSELL, J., held that it was competent for a local authority to leave the time to be fixed by a competent official.

* * * * *

FORM K.

Form of Rent-charge (a).

By virtue of the Public Health Act, 1875, we, the being the local authority under that Act for the district of do hereby declare and absolutely order that the inheritance of the [dwelling-house shop lands and premises, *as the case may be*], situated in street, in the parish of within the said district, and now in the occupation of shall be absolutely charged with the sum of pounds, paid by of for the improvement by drainage and water supply (*as the case may be*) of the same dwelling-house shop lands and premises [*as the case may be*], together with interest for the same from the date hereof at pounds per centum per annum, until full payment thereof; and also all costs incurred by the said his executors administrators or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises, to the said his executors administrators and assigns, in manner following; (that is to say,) the interest on such principal sum of pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the day of and the day of in every year, the first payment thereof to be made on the day of next, and such principal sum of pounds shall be paid and payable by equal annual instalments on the day of in each of the next succeeding years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

[To be sealed with the common seal of the local authority.]

(a) See s. 240, *ante*, p. 4478.

Schedule 5.

SCHEDULE V.

Part 1.

PART I. (a).

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 63 -	The Public Health Act, 1848 -	The whole Act.
14 & 15 Vict. c. 28 -	The Common Lodging Houses Act, 1851.	The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vict. c. 41 -	The Common Lodging Houses Act, 1853.	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 116 -	The Diseases Prevention Act, 1855.	The whole Act, except so far as relates to the Metropolis.
18 & 19 Vict. c. 121 -	The Nuisances Removal Act for England, 1855.	The whole Act, except so far as relates to the Metropolis.
21 & 22 Vict. c. 98 -	The Local Government Act, 1858.	The whole Act.
23 & 24 Vict. c. 77 -	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act, except so far as relates to the Metropolis.
24 & 25 Vict. c. 61 -	The Local Government Act (1858) Amendment Act, 1861.	The whole Act.
26 & 27 Vict. c. 17 -	The Local Government Act Amendment Act, 1863.	The whole Act.
26 & 27 Vict. c. 117 -	The Nuisances Removal Act for England (Amendment) Act, 1863.	The whole Act, except so far as relates to the Metropolis.
28 & 29 Vict. c. 75 -	The Sewage Utilization Act, 1865.	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vict. c. 41 -	The Nuisances Removal (No. 1) Act, 1866	The whole Act, except so far as relates to the Metropolis.
29 & 30 Vict. c. 90 -	The Sanitary Act, 1866 - -	Parts I., II., and III., except so far as relates to the Metropolis or to Scotland or Ireland.
30 & 31 Vict. c. 113 -	The Sewage Utilization Act, 1867.	The whole Act, except so far as relates to Scotland or Ireland.
31 & 32 Vict. c. 115 -	The Sanitary Act, 1868 - -	The whole Act, except so far as relates to the Metropolis.
32 & 33 Vict. c. 100 -	The Sanitary Loans Act, 1869 -	The whole Act, except so far as relates to the Metropolis.
33 & 34 Vict. c. 53 -	The Sanitary Act, 1870 - -	The whole Act, except so far as relates to the Metropolis.
35 & 36 Vict. c. 79 -	The Public Health Act, 1872 -	The whole Act, except so far as relates to the Metropolis.
37 & 38 Vict. c. 89 -	The Sanitary Law Amendment Act, 1874.	The whole Act, except so far as relates to the Metropolis or the Metropolitan Police District.

(a) This Part was repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014).

Of the above Acts, the following, (namely,) "The Public Health Act, 1848," and "The Local Government Act, 1858," and "The Local Government Act (1858) Amendment Act, 1861," and "The Local Government Act Amendment Act, 1863," are in this Act referred to as "The Local Government Acts" (a).

(a) This definition ought more properly to have been inserted in s. 4, *ante*, p. 4331. It will be observed that the Sanitary Law Amendment Act, 1874 (11 Halsbury's Statutes 1006), is not included in this definition, apparently through inadvertence.

All the above Acts, so far as they relate to the metropolis, were repealed and consolidated by the P. H. (London) A., 1891 (*op. cit.* 1025).

Schedule 5.
Part 1.

PART II. (a).

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 94 -	The Public Health Supplemental Act, 1849.	The whole Act, except—Section 1 (Confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vict. c. 90 -	The Public Health Supplemental Act, 1850 (No. 2).	The whole Act, except—Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vict. c. 42 -	The First Public Health Supplemental Act, 1852.	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards, and section 13 (11 & 12 Vict. c. 63, ss. 68, 69, as to repair of highways), and section 14 (interpretation of year), and section 15 (Act incorporated with Public Health Act).

(a) This Part was repealed by the S. L. R. A., 1883 (18 Halsbury's Statutes 936).

PART III. (a).

11 & 12 Vict. c. 63, s. 83.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August one thousand eight hundred and forty-eight; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment (b), shall for every such offence be liable to a penalty not exceeding fifty pounds (c), which may be recovered by any person (d), with full costs of suit, in an action of debt (e).

(a) In order to form a proper consolidation of the law, it was deemed necessary entirely to repeal all the statutes applicable to the general subject of sanitary law. But in some of these statutes were found certain provisions which could not be

As to interments within churches.

Schedule 5. introduced into the body of the Act, but which required to be kept in force. Accordingly those provisions are re-enacted in this Part of the Schedule.

Part 3.

(b) The judge of the Consistory Court of London has held that these words do not extend to the placing of a sealed urn containing the cremated ashes of a deceased person in the wall of a church (*In re Kerr*, [1894] P. 284; 7 Digest 528, 87).

(c) See, as to the recovery of this penalty, s. 251, *ante*, p. 4481.

(d) That is, by any person, without the consent of the Attorney-General under s. 253. See the notes to that section, *ante*, p. 4482, and *Fletcher v. Hudson*, there cited.

(e) The form of action here referred to is now abolished, but the right of action is not affected by more recent legislation relating to procedure.

21 & 22 Vict. c. 98, s. 49 (a).

Local board
to be burial
board in
certain cases.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate (b).

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

(a) See also Sanitary Act, 1866, s. 44, and the Burial Acts, *ante*, pp. 4247, 4252.

(b) Under the Burial Acts the poor rate was chargeable. This amount will in future be levied as part of the general rate under the R. and V. A., 1925, *ante*, pp. 2113 *et seq.*

As to the liability of a burial board to be assessed to income tax in respect of surplus income, see *Paddington Burial Board v. Commissioners of Inland Revenue* (1884), 13 Q. B. D. 9; 48 J. P. 311; 7 Digest 542, 223; *Edinburgh Southern Cemetery Co. v. Inland Revenue* (1889), 17 R. (Ct. of Sess.) 154; 28 Digest 8, r; *Paisley Cemetery Co., Ltd. v. Reith* (1898), 63 J. P. 806; 25 R. (Ct. of Sess.) 1080; 7 Digest 564, 386 i; and *cf. Sugden v. Leeds Corporation*, [1914] A. C. 483; 77 J. P. 225; 28 Digest 74, 397; *Garston Overseers v. Carlisle*, [1915] 3 K. B. 381; 28 Digest 83, 478.

24 & 25 Vict. c. 61, s. 21.

Urban
authorities
may repair
fences
surrounding
burial
grounds.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass byelaws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

26 & 27 Vict. c. 17, s. 6.

Local
government
districts to
be within
highway
districts for
purpose of
highway
meetings.

Where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district.

This enactment is now obsolete.

29 & 30 Vict. c. 90, s. 44.

Schedule 5.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate property rights powers duties and liabilities, and from and after such transfer, the urban authority shall have all such estate property rights powers duties and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

Part 3.

Power to burial boards in certain cases to transfer their powers to urban authority.

Burial Act, 1871, s. 2 (2 Halsbury's Statutes 241), enacted that "This Act shall be construed as one with the Acts mentioned in the Schedule to this Act, and those Acts and this Act may be cited together as the Burial Acts, 1852 to 1871, and each of them may be cited as the Burial Act of the year in which it was passed." The Schedule set forth the following Acts and their titles: 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; 17 & 18 Vict. c. 87; 18 & 19 Vict. c. 128; 20 & 21 Vict. c. 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; 25 & 26 Vict. c. 100 (*op. cit.* 190, 210, 214, 218, 227, 238, 239, 240). The Short Titles Act, 1892, s. 1 (2), provides that the foregoing Acts, together with 34 & 35 Vict. c. 33; 43 & 44 Vict. c. 41 (*op. cit.* 241, 242); 44 & 45 Vict. c. 2; 48 & 49 Vict. c. 21 (*op. cit.* 247), may be cited by the collective title of the Burial Acts, 1852 to 1885; and part of s. 2 of the Burial Act, 1871, together with the Schedule, was accordingly repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014). In addition to the Acts above mentioned, see also the Burial Act, 1900, *post*, p. 4990. It is impossible to include all these Acts in the present volume, but some of the provisions more directly affecting sanitary authorities will be found, *ante*, pp. 4247, 4252. As to the powers of urban district councils to act as burial boards under local Acts, see the Burial Act, 1855, ss. 19, 20 (2 Halsbury's Statutes 225). On the subject of the Burial Acts, reference should be made to Brooke Little's "Law of Burials."

[Here followed Sanitary Act, 1866, ss. 51 and 52, which are now repealed by the Public Health Act, 1896, ss. 6 and 7.]

* * * * *

35 & 36 Vict. c. 79, s. 35.

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same (a), and under the Metropolis Water Acts, 1852 and 1871 (b), shall be exercisable and performed by the Local Government Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

This provision is extended to London by Public Health (London) Act, 1891, s. 142 (11 Halsbury's Statutes 1100).

(a) The Alkali Act, 1863, and the Acts amending the same (Alkali Act Perpetuation Act, 1868; Alkali Act, 1874) were repealed by the Alkali, etc. Works Regulation Act, 1881. The last mentioned Act and the Alkali, etc. Works Regulation Act, 1892, have now been replaced by the Alkali, etc. Works Regulation Act, 1906, *post*, p. 5003, which imposes upon sanitary authorities important duties with respect to, alkali works. This Act was amended by s. 4 of the P. H. (Smoke Abatement) A., 1926; Vol. V. and 13 Halsbury's Statutes 1157. These powers are now exercised by the M. of H.

(b) See Metropolis Water Act, 1852; Metropolis Water Act, 1871 (20 Halsbury's Statutes 214, 226), see also Metropolis Water Act, 1897; Metropolis Water Act, 1899; Metropolis Water Act, 1902 (20 Halsbury's Statutes 250, 252, 254).

35 & 36 Vict. c. 79, s. 36.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of her Majesty's principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and

Transfer to Local Government Board of powers and duties of

Schedule 5. Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

Part 3.
Secretary of
State under
Highway and
Turnpike
Acts.

This provision is extended to London by Public Health (London) Act, 1891, s. 142 (11 Halsbury's Statutes 1100). These powers are now exercised by the Minister of Transport (see Ministry of Transport Act, 1919, *post*, p. 5195).

35 & 36 Vict. c. 79, s. 37.

Transfer of
officers to
Local
Government
Board.

All inspectors, clerks, and other officers who are by virtue of section thirty-seven of the Public Health Act, 1872 (*a*), attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed.

The Local Government Board may by Order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

(*a*) Local Government Board Act, 1871, *ante*, p. 4319, transferred certain powers to the L. G. B. and at the same time placed the officers of departments previously engaged therein under the control of the new board. P. H. A., 1872, transferred other powers, and in s. 37 made a similar provision as to the officers engaged therein. Local Government Board Act, 1871, remains unrepealed (see the Act, *ante*, p. 4319); but as P. H. A., 1872, is wholly repealed, s. 37 is here re-enacted. These officers, etc., were transferred to the Ministry of Health by Ministry of Health Act, 1919, s. 6, *post*, p. 5192.

35 & 36 Vict. c. 79, s. 38.

Salary of
medical
officer of
Local Govern-
ment Board.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the Local Government Board such salary as the Treasury may from time to time determine.

See, as to the appointment of this officer, P. H. A., 1858, s. 4, *ante*, p. 4250; but note that that section is repealed by the S. L. R. A., 1875 (18 Halsbury's Statutes 981), so far as relates to his salary.

[Here followed P. H. A., 1872, s. 48, which is now repealed by Poor Law Act, 1927, s. 245, and Sched. XI.; 12 Halsbury's Statutes 964, 965.]

THE LOCAL LOANS ACT, 1875.

(38 & 39 VICT. c. 83) (*a*).

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities. [13th August, 1875.]

(1) PRELIMINARY.

Short title.

1. This Act may be cited for all purposes as "The Local Loans Act, 1875."

(*a*) This Act is amended by the Local Loans Sinking Funds Act, 1835, *post*, p. 4696. The preamble and clause of enactment and s. 3 of this Act were repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014).

2. This Act shall not extend to Scotland or Ireland.

Section 2.

3. [*Commencement of Act.*]

Extent of Act.

4. A local authority (a) shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures (b) or debenture stock (c) or annuity certificates (b), purporting to be created under its powers, or partly in one way, and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted (d).

Definition of borrowing under Act.

(a) See the definition of local authority in s. 34, *post*, p. 4541. The term includes sanitary authorities. As to stamp duty on loan capital, see the Finance Act, 1899, s. 8, set out in notes to s. 204 (2) of L. G. A., 1933, *ante*, p. 1039, as amended by the Finance Act, 1907, s. 10, *post*, p. 5031.

(b) The power to raise loans by debentures or annuity certificates under this Act is saved by L. G. A., 1933, s. 196 (1) (c), *ante*, p. 1031.

(c) This Act itself does not give power to issue debenture stock. See s. 6, *infra*. The L. G. B. stated that they had been advised by the law officers of the Crown that a local authority could not exercise a borrowing power by the issue of debenture stock under this Act unless they had power independently of the Act to raise the loan by the issue of debenture stock. The Board, however, thought that it was competent to a local authority to avail themselves of the Act for the exercise of borrowing powers under Acts passed subsequently to this Act so far as regards the issue of securities other than debenture stock.

(d) As to what is the prescribed mode, see s. 34, *post*, p. 4541.

(2) DEBENTURES (a).

5. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate (b) or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Regulations as to debenture stock.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

(a) As to stamp duty, see Stamp Act, 1891, ss. 82 (1), 85 (1), (2), 122, and Schedule I, title "Marketable Security" (16 Halsbury's Statutes 641, 655, 675). And as to composition for stamp duty, see s. 115 of the same Act (*op. cit.* 654).

(b) See the definition in s. 34, *post*, p. 4542.

Section 6.

(3) DEBENTURE STOCK (a).

Regulations as
to debenture
stock.

6. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock (b). Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorised to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof (c).

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority.

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery.

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

(a) As to stamp duty, see the Stamp Act, 1891, ss. 108, 109, and Schedule I., title "Share Warrants, etc." (16 Halsbury's Statutes 650, 681). As to composition for stamp duty, see s. 115 of the same Act (*op. cit.* 653). As to corporation duty under the Customs and

Inland Revenue Act, 1885, s. 11 (*op. cit.*, 560), payable on income of a sinking fund vested in trustees, see *Att.-Gen. v. London (City) Corporation*, [1913] 2 K. B. 497; 21 Digest 66, 442.

(b) Therefore there must be power under a special Act to issue debenture stock. See note (c) to s. 4, *ante*, p. 4531. A local authority who are authorised to borrow money may do so by issuing stock, but only with the consent of the Minister (see L. G. A., 1933, s. 196 (1) (b), *ante*, p. 1031). See also s. 122 of the Housing Act, 1936, *ante*, p. 1726, which give to certain local authorities power to raise money by the issue of securities and bonds.

(c) A corporation were empowered by a local Act to create and issue corporation stock "to bear any rate of dividend which the corporation may fix, and all stock of such class shall be redeemable at the option of the corporation at one and the same period to be fixed by the corporation but not exceeding sixty years from the first issue of such stock." The corporation created and issued stock, the certificates for which stated that the holders were the proprietors of a certain amount of "Edinburgh 2½ per cent. stock subject to the Acts of Parliament relating thereto . . . redeemable at par after Whitsunday, 1927." It was held that the corporation had an option to redeem the stock at par after Whitsunday, 1927, but that they were not bound to do so (*Edinburgh Corporation v. British Linen Bank*, [1913] A. C. 133; 33 Digest 89, 587).

(4) ANNUITY CERTIFICATES.

7. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified. Regulations as to annuity certificates.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5) PRIORITY OF LOANS.

8. . . . (a).

Where any sum of money is authorised to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorised to be borrowed be not exceeded. Priority of loans.

The date of each loan shall, with a view to . . . the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(a) This section is printed as amended by the L. G. A., 1933, Sched. XI, Pt. IV., *ante*, p. 1281.

Section 9.

(6) NOTICE OF TRUSTS.

Notice of trust
not receivable.

9. No notice of any trust, expressed implied or constructive, shall by received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act (a).

(a) The object of this section is (a) to relieve the local authority from taking notice of equitable interests in securities, and (b) to preclude persons claiming under equitable titles from converting the local authority into a trustee for them.

Owners of
securities not
responsible for
act of local
authority.

10. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

Cf. s. 203, L. G. A., 1923, and notes thereto, ante, p. 1037.

(7) REMEDY FOR NON-PAYMENT.

Remedy by
mandamus for
non-payment
of money.

11. The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a mandamus will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a mandamus may be claimed (a).

(a) See R. S. C., 1883, Order LIII.

Remedy by
appointment
of receiver for
non-payment
of money.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver (a); and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by the receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act

mentioned (b), by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct. **Section 12.**

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.

(a) See County Court Rules, Order XLIII., rr. 1, 3.

(b) See ss. 5, 6, *ante*, p. 4531.

(8) DISCHARGE OF LOAN.

13. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period (a) from the date thereof, and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

Loan borrowed to be discharged within prescribed period.

By the issue of annuity certificates limited to expire within the prescribed period; or

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or

Where a sinking fund is prescribed, but not otherwise (b), by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

(a) As to the prescribed period, see s. 34, *post*, p. 4541; cf. L. G. A., 1933, s. 198, Sched. VIII., *ante*, pp. 1033, 1265.

(b) It is provided by the Local Loans Sinking Funds Act, 1885, *post*, p. 4696, that, notwithstanding anything contained in the above Act, every loan borrowed in manner provided by the above Act, may be discharged by the establishment of a sinking fund as therein mentioned, notwithstanding that a sinking fund may not have been prescribed by the special Act authorising the loan.

14. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

Discharge of loan by appropriation of annual sum

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of

Section 14. the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn in the presence of the local authority, and any owners of debenture (a) or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

(a) *Sic* in statute. It should read "debentures."

Discharge of
loan by sinking
fund.

15. Where a sinking fund is prescribed (a) for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter mentioned; that is to say,

- (1) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority, (regard being had to the securities in which they are authorised to make investments), will at the expiration of some period not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and
- (2) The first of such payments shall be made within one year from the date of the loan; and
- (3) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board (b) shall assent, in securities in which trustees are by law for the time being authorised to invest, or in debentures, debenture stock, or annuity certificates issued under this Act; and any such investments may be from time to time varied or transposed; and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and
- (4) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose;
- (5) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned:

- (6) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan for the discharge of which it was created shall be paid into some other sinking fund under the control of the local authority ; or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board (b), think expedient : Section 15.
- (7) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act :
- (8) If the annual income of the sinking fund is not less than the annual interest payable on so much of the loan or part of the loan in respect of which it was created as remains undischarged, the equal annual sums required by this section to be paid into the sinking fund may cease to be so paid.

(a) See note (b) to s. 13, *ante*, p. 4535.

(b) The L. G. B. has now been superseded by the Minister of Health.

16. [*This section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., ante, pp. 1194, 1281. As to returns to the Minister, see now s. 199 of that Act, ante, p. 1034.*]

SUPPLEMENTAL PROVISIONS.

(1) AS TO COUPONS.

17. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period (a). Temporary issue of coupons.

(a) For power of local authority to make rules as to issue of coupons, see s. 30, *post*, p. 4540.

18. A coupon payable to order which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser. Endorsement and crossing of coupons.

Where the coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or the words of "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named, or some banker (a).

**Note to
Section 18.**

(a) As to crossed coupons, see s. 32, *post*, p. 4541. Also Bills of Exchange Act, 1882, ss. 76—82 (2 Halsbury's Statutes 74—76), and Revenue Act, 1883, s. 17 (16 Halsbury's Statutes 547).

Coupons issued
exempt from
stamp duty.

19. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

(2) AS TO STOCK CERTIFICATES.

Conversion into
nominal
debenture stock
of stock
certificate to
bearer.

20. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

21. [*Trustee not to apply for stock certificate to bearer*] (a).

(a) This section was repealed by s. 51 of the Trustee Act, 1893. See now s. 7 of the Trustee Act, 1925; Vol. V. and 20 Halsbury's Statutes 101.

(3) AS TO EXECUTION AND SUPPLY OF SECURITIES.

Execution and
supply of
securities.

22. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board (a) may direct on the application of any local authority, whether corporate or unincorporate.

(a) Now the M. of H. (see Ministry of Health Act, 1919, *post*, p. 5189).

The Commissioners of Inland Revenue may, when required by the local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4) AS TO REGISTER OF NOMINAL SECURITIES.

Register
of nominal
securities.

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register (a) of such securities to be kept in one or more book or books, and there shall be entered in such register—

- (1) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered; and,
- (2) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

(a) For power of local authority to make rules as to registry, see s. 30, *post*, p. 4540.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence. **Section 24.**
Inspection of register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified. Rectification of register.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred; and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court (a); and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise.

(a) See County Court Rules, Order XLIII., rr. 2, 3.

(5) AS TO LOANS UNDER OFFICIAL SANCTION.

26. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board (a) to authorise the issue of such securities under official sanction. Permissive issue of securities under official sanction.

The Local Government Board, (a) before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board (a) may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board (a) to ascertain the facts required by this section to be stated in relation to such issue; and the Local Government Board (a) may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient; and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board (a) may from time to time direct.

The sanction of the Local Government Board (a) given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

Section 26. The owner of any security issued under official sanction shall on request made by him to the Local Government Board (a) be furnished with a statement of the following particulars; that is to say,

Where a security is charged on a rate, of the rateable value. at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan, in respect of which such security is issued. and of the other loans (if any) of the borrowing authority; and such statement shall be evidence of the particulars therein stated.

(a) The L. G. B. has now been superseded by the Minister of Health.

(6) AS TO INVESTMENTS ON LOANS UNDER ACT.

27. [*Power for trustees to invest in loans under Act*] (a).

(a) This section was repealed by s. 51 of the Trustee Act, 1893. See now s. 5 (4) of the Trustee Act, 1925, Vol. V., *post*, enacting that a trustee having power to invest money in debentures or debenture stock, of any railway, or other company may invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875. But if the power of investment in railway stock is limited by the express terms of the instrument, it would seem that the limitation applies also to investment in stock under this Act (*Re Maberly* (1886), 33 Ch. D. 455; 40 Digest 749, 2792).

The power given by the Act of 1893, s. 5 (3) (now s. 5 (4) of the 1925 Act, Vol. V., *post*), is limited to trustees having power by the express terms of the instrument creating the trust to invest in railway debentures or debenture stock. Trustees only having power under s. 1 (g) of the Act of 1893 (now s. 1 (1) (g) of the 1925 Act, Vol. V., *post*), to invest in railway debentures or debenture stock, have not the additional power conferred by s. 5 (3) of investing in local loans debentures or debenture stock (*Re Tattersall, Topham v. Armitage*, [1906] 2 Ch. 399; 70 J. P. 537; 43 Digest 934, 3715).

See also s. 1 (1) (p) of the Trustee Act, 1925, Vol. V., *post*, as to mortgages of rates, etc., being trustee securities.

Power for Public Works Loan Commissioners to take securities under Act.

28. When the Public Works Loan Commissioners are authorised to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7) AS TO GENERAL RULES.

Application of rules in Schedule.

29. The general rules in the Schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Power to make general rules.

30. The local authority may from time to time, with the consent of the Local Government Board (a), make, and, when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters:

- (1) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and
- (2) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the Schedule hereto.

Any general rules made by the local authority in pursuance of this section

shall, so far as they are consistent with this Act, have the same force as if they were enacted therein. **Section 30.**

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(a) The L. G. B. has now been superseded by the Minister of Health.

(8) AS TO BORROWING.

31. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorised to borrow (a). Borrowing and re-borrowing by local authorities.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act: Provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board (b), and in no case shall be extended beyond the prescribed period.

(a) It is to be observed that this Act regulates the mode of borrowing and the securities to be given, but it does not itself authorise borrowing in any particular case or cases.

(b) The L. G. B. has now been superseded by the Minister of Health.

(9) AS TO FORGERY AND LOSS OF SECURITIES.

32. For the purposes of the Forgery Act, 1861, debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker (a). Forgery of securities. 24 & 25 Vict. c. 98.

(a) As to crossed coupons, see note (a) to s. 18, *ante*, p. 4538. And see the Forged Transfers Acts, 1891 and 1892, *post*, pp. 4831, 4839.

33. If any security issued under this Act is lost mislaid or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expenses of the issue, issue a fresh security in the place of the security so lost mislaid or destroyed. Loss of securities.

(10) DEFINITIONS.

34. For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorising a local authority to borrow money: Definitions.

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority:

"Municipal borough" means any borough for the time being subject to the Municipal Corporations Act, 1835, and any Acts amending the same (a): 5 & 6 Will. 4. c. 76.

Section 34.

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate; and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid; and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly:

"Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise:

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act:

"Person" includes a body of persons corporate or unincorporate:

"Executors and administrators" includes successors.

(a) Now the boroughs mentioned in L. G. A., 1933, Sched. I., Pts. II., III., *ante*, pp. 1197—1200, or subsequently raised to that status.

(11) REPEAL AND CONSEQUENTIAL ENACTMENT.

35. [*Repeal of County Debentures Act, 1873* (a).]

(a) Repealed by the S. L. R. A., 1883 (18 Halsbury's Statutes 986).

36. [*Incorporation of justices*] (a).

(a) This section was repealed by the L. G. A., 1933, Sched. XI., Pt. IV., *ante*, p. 1281.

SCHEDULE.

GENERAL RULES.

[Sect. 29.]

Transfer of Nominal Securities.

(1) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them (a).

(2) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

Transmission of Nominal Securities.

(4) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognised by the local authority as having any title to such security.

(5) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

Schedule.
—

(6) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

(a) See also the Law of Property Act, 1925, s. 111; Vol. V. and 15 Halsbury's Statutes 293.

THE CONSPIRACY, AND PROTECTION OF PROPERTY ACT, 1875 (a).

(38 & 39 VICT. c. 86.)

*An Act for amending the Law relating to Conspiracy, and to the Protection of
Property, and for other purposes.* [13th August, 1875.]

1. This Act may be cited as "The Conspiracy, and Protection of Property Act, 1875." Short title.

(a) This Act is amended by the Trade Disputes and Trade Unions Act, 1927. Section 6 of that Act which relates to local authorities is set out in Vol. V. and 3 Halsbury's Statutes 333.

* * * * *

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously (a) breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as herein-after mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Breach of contract by persons employed in supply of gas or water.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every

Section 4. person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings (b).

(a) As to the meaning of this word, see s. 15, *infra*. As to the right to claim trial by jury, see *R. v. Mitchell*, [1913] 1 K. B. 561; 77 J. P. 148; 33 Digest 318, 332.

(b) This section has been extended to persons employed by a joint electricity authority or by any authorised undertakers, see s. 31 of the Electricity (Supply) Act, 1919, *post*, p. 5261.

* * * * *

Definitions of
"municipal
authority"
and "public
company."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

"Maliciously"
in this Act
construed as
in Malicious
Injuries to
Property Act.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

* * * * *

THE PUBLIC WORKS LOANS ACT, 1875.

(38 & 39 VICT. c. 89) (a).

An Act to consolidate with Amendments the Acts relating to Loans for Public Works.
[13th August, 1875.]

PRELIMINARY.

Short title.

1. This Act may be cited as "The Public Works Loans Act, 1875."

(a) The clause of enactment and s. 2 of this Act are repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014). See also the amending Acts, Public Works Loans (Money) Act, 1876 (12 Halsbury's Statutes 275); Public Works Loans Acts, 1878 (*op. cit.* 275); 1879 (*op. cit.* 277); 1881 (*op. cit.* 278); 1882 (*op. cit.* 279); 1887 (*op. cit.* 291); 1892 (*op. cit.* 293); 1896 (*op. cit.* 295); 1897 (*op. cit.* 296); 1898 (*op. cit.* 299); 1899 (*op. cit.* 299); 1903; 1911 (*op. cit.* 302); 1917 (*op. cit.* 304); 1918 (*op. cit.* 305); 1935 (28 Halsbury's Statutes 167); (No. 2) 1937 (30 Halsbury's Statutes 681). The other Acts relating to Public Works Loans, Public Works Loans Acts, 1880, 1884, 1885, 1886

**Note to
Section 1**

1888 (12 Halsbury's Statutes 292); 1889 (*op. cit.* 292); 1890, 1891, 1893; (No. 2) 1893 (*op. cit.* 294); 1894 (*op. cit.* 295); 1895, 1901, 1902, 1903; 1904 (*op. cit.* 300); 1905, 1906; 1907 (*op. cit.* 300); 1912, 1913, 1914, 1915, 1916, 1919, 1920, 1921, 1922, 1923, 1924; 1925 (*op. cit.* 306); 1926; 1927 (*op. cit.* 307); (No. 2) 1927; 1928 (*op. cit.* 308); 1930 (23 Halsbury's Statutes 392); 1931 (24 Halsbury's Statutes 287); 1932 (25 Halsbury's Statutes 317); 1934 (27 Halsbury's Statutes 449); 1937 (30 Halsbury's Statutes 679); 1938 (31 Halsbury's Statutes 535); are not included in this Appendix, as they relate only to the appointment of Commissioners, or to the grant of money by Parliament for the purposes of loans, or to particular loans.

2. [Commencement of Act.]

3. This Act shall extend to the Isle of Man.

Extent of Act.

PUBLIC WORKS LOAN COMMISSIONERS.

4. For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act and of any enactment passed or hereafter to be passed authorising or referring to such loans, there shall be a body of commissioners (in this Act referred to as the Loan Commissioners), who may be styled the Public Works Loan Commissioners. Constitution,
etc. of Public
Works Loan
Commissioners.

Every person who may from time to time be appointed by Act of Parliament a Public Works Loan Commissioner shall, on signing the declaration in the Second Schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act (a).

The Public Works Loan Commissioners shall hold office during such period as may be authorised by any Act appointing them, and if no period is so authorised, during the period of five years after the passing of such Act, and, if at the expiration of such period successors have not been appointed, may continue to hold office until successors be appointed, subject to this qualification, that they shall not grant any new loan after the expiration of such period.

Whenever any vacancy among the Commissioners occurs by any Commissioner dying or declining to act, or declining further to act, the remaining Commissioners or a majority of them may by writing under their hands and seals, with the concurrence of the Treasury, appoint such person to fill the vacancy as seems fit, and the person so appointed shall, on signing the declaration in the Second Schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act, and shall hold office for the period during which the Commissioner in whose place he is appointed would have held office.

A Public Works Loan Commissioner shall not receive any salary, fee, or emolument in respect of his services as such Commissioner.

(a) The names of the present Commissioners will be found in the Public Works Loans Act, 1930, s. 1 (23 Halsbury's Statutes 392).

5. With respect to the Loan Commissioners the following provisions shall have effect: Powers, etc. of
Commissioners.

- (1) The Loan Commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit in law or equity brought or commenced by or against the said Commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said Commissioners; but the secretary to the said Commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit as the case may be; and

Section 5.

(2) The Commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration ; and

(3) The Loan Commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the Commissioners either before or after the passing of this Act, and the execution of the duties of the Loan Commissioners, and such other particulars as the Loan Commissioners may from time to time think fit :

Such particulars shall include a statement of any difference that may have arisen between the Loan Commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the Loan Commissioners :

Such report shall be transmitted to the Treasury within two (a) months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament ; and

(4) Any minute made of proceedings at meetings of the Commissioners if signed by any person purporting to be the chairman, either of the meeting of the Commissioners at which such proceedings took place, or of the next ensuing meeting of the Commissioners, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the Commissioners, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act ; and

(5) An act or proceeding of the Commissioners shall not be questioned on account of any vacancy or vacancies in their body.

(a) Three. See the Public Works Loans Act, 1899, s. 6 (12 Halsbury's Statutes 299).

Officers and
their salaries
and expenses.

6. The Loan Commissioners may from time to time appoint or employ a secretary, solicitor, civil engineer, surveyor, and such number of officers, clerks, messengers, and other persons as they may, with the consent of the Treasury, deem necessary, and may remove any person so appointed or employed.

The Loan Commissioners may from time to time assign to any person so appointed or employed by them such salary or remuneration as they may, with the sanction of the Treasury, think proper.

A person appointed or employed by the Loan Commissioners, in pursuance of this section, shall not receive any remuneration in respect of such appointment or employment or otherwise in respect of the execution of his duties under this Act, except such as may be assigned to him in pursuance of this section.

Every such salary or remuneration, and all expenses incurred by the Loan Commissioners in the execution of this Act, shall be paid out of moneys provided by Parliament.

7. Where under this or any other Act or any conveyance obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the Loan Commissioners for the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as often as the same happens and the appointment of a successor takes place, shall (subject to the same trusts, and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act and without any act or deed whatever to be done by the secretary dying, resigning or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them, or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary dying, resigning, or removed.

Section 7.

Securities given to and property vested in secretary to vest in his successor.

Where the secretary of the Loan Commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the Commissioners shall be deemed to represent the Crown, so far as regards the interest of the Crown in any loan granted under this Act or any money due under a security for any such loan, and it shall not be necessary to make the Crown or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid.

8. All conveyances, leases, mortgages, releases, arrangements, and things which the Loan Commissioners are authorised by this Act to grant, execute, make, or concur in, and all powers, acts, and things which the Loan Commissioners are authorised by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary, shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the Commissioners, unless the contrary is shown by some person interested in contesting the validity thereof.

Execution of conveyances, leases, etc. by secretary on behalf of Commissioners.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exercisable by the secretary of the Commissioners in pursuance of this Act shall be dealt with and exercised by him under the direction of the Commissioners and not otherwise.

OBJECTS, TERMS, AND DURATION OF LOAN.

9. The Loan Commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the First Schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose (a).

Loans for public works.

The Loan Commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work [or purchase of land (b)] for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament (c).

**Note to
Section 9.**

(a) The schedule includes all, or nearly all, the purposes for which a sanitary authority may borrow money. By the Public Works Loans Act, 1896, s. 2, *post*, p. 4940, there shall be added to the works for which the Commissioners may lend, any work for which the council of a county, borough, district, or parish are authorised to borrow. By the Small Dwellings Acquisition Act, 1899, s. 9 (7), *ante*, p. 1805, the Commissioners may lend money to a local authority for the purposes of that Act. Separate accounts must be kept by a local authority of all loans from the Commissioners on the security of the rates. See the Public Works Loans Act, 1882, s. 8, *post*, p. 4663.

(b) Words in square brackets added by the Public Works Loans (No. 2) Act, 1937, s. 3 (1); Vol. V. and 30 Halsbury's Statutes 681.

(c) See the notes to s. 243 of the P. H. A., 1875 (13 Halsbury's Statutes 726).

Interest on loan.

24 & 25 Vict.
c. 47.

10. Every loan granted under this Act shall bear interest at a rate not less than the rate authorised by a special Act relating to such loan (a), or if no rate be so authorised, not less than five per cent. per annum: Provided that when the aggregate amount of principal moneys due by any harbour authority to the Commissioners under the Harbours and Passing Tolls, etc. Act, 1861, exceeds one hundred thousand pounds, the rate of interest on such excess shall be three-and-a-half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

(a) See the P. H. A., 1936, s. 311, *ante*, p. 659, and the notes thereto. See also the Housing Act, 1936, s. 123, *ante*, p. 1727, and Public Works Loans Act, 1897, s. 1, and notes thereto, *post*, p. 4943. In the application of the above sections to loans granted after June 28th, 1892, 4 per cent. is to be read instead of 5 per cent. See the Public Works Loans Act, 1892, s. 2 (12 Halsbury's Statutes 293).

**Term of years
for repayment
of loan.**

11. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised not exceeding *twenty* (a) years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the Loan Commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the Loan Commissioners, stating special circumstances, may either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the Loan Commissioners (b).

The Loan Commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the Loan Commissioners and the Treasury in considering whether the period should be extended as aforesaid, shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

(a) This maximum period is now fifty years: see Public Works Loans Act, 1911, s. 4, *post*, p. 5119; it had previously been raised to thirty by the Public Works Loans Act, 1898, s. 5 (12 Halsbury's Statutes 299).

(b) See note (a) to s. 10, *supra*.

12. The Loan Commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorised by the special Act relating to the loan, or if none is so authorised, of a mortgage of property or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security. Section 12.
Security for
loans.

The Loan Commissioners may, if they think fit, dispense with personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

FUNDS FOR LOANS.

13. [*Annual estimates of amounts required*] (a).

(a) This section is repealed by the Public Works Loans Act, 1882—see note (b) to s. 8 of that Act, *post*, p. 4664.

14. [*Treasury to issue sums required for loans*] (a).

(a) This section and part of s. 15 were repealed by the National Debt and Local Loans Act, 1887, s. 21. By that Act the National Debt Commissioners were required to issue to the Public Works Loan Commissioners the amount authorised by Parliament for advances to be made by the Loan Commissioners, and these advances are in the Act included under the expression 'local loans.' For this purpose the Act further established the Local Loans Fund under the control of the National Debt Commissioners, and out of this fund all advances are now made for the purpose of local loans.

15. . . . The annuities created in pursuance of this section, and the principal moneys borrowed in pursuance of this section (otherwise than by the issue of Exchequer bonds) and all interest from time to time due thereon, or on Exchequer bonds issued under this section (not exceeding the rate of five per cent. per annum) shall be charged upon and be payable out of the Consolidated Fund, or out of the growing produce thereof, at such times in each year as may be fixed by the Treasury. Borrowing for
the purpose of
raising money.

The principal of any Exchequer bonds issued under this section shall be paid out of moneys provided by Parliament.

The said annuities shall, in manner directed by the warrant, be consolidated in the said books, if terminable, with annuities payable at the same date, and, if permanent, with annuities at the same rate of interest, and payable at the same date, and shall be transferable in the said books in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

16. [*Money issued by Treasury to be issued to National Debt Commissioners*] (a).

(a) Sections 16 and 17 were repealed by the National Debt and Local Loans Act, 1887, s. 21.

17. [*Sums repaid to be paid into the Exchequer*] (a).

(a) See note (a) to s. 16, *supra*.

RECOVERY OF LOANS.

18. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mort- Charge on
property and
priority of
loan by the
Commissioners

Section 18. gage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the Commissioners and secured by a mortgage of the property executed to a person who is entitled as a bonâ fide creditor to the repayment thereof with interest.

Provided that if there is more than one such creditor and not less than four-fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the Commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act (*a*), and no rule of law or custom, shall affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act.

(*a*) The special Act includes any Act relating to any person having power to borrow from the Commissioners. See the Public Works Loans (Money) Act, 1876, s. 7, *post*, p. 4562.

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

19. Where a loan is granted by the Loan Commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the Commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the Commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

20. All securities for any loan granted by the Loan Commissioners in pursuance of this Act may be given to the secretary of the Commissioners on their behalf. Every such security is in this Act referred to as a security given to the Commissioners.

Taking possession by Commissioners of property on default of payment.

21. Where a mortgage of property has been given to secure any loan granted by the Loan Commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the Commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things; namely,—

- (1) Take possession of the mortgaged property, or any part thereof; and
- (2) Grant any lease of the mortgaged property, or any part thereof, for

such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and **Section 21.**

- (3) Sell or mortgage the mortgaged property or any part thereof.

22. The Loan Commissioners, when authorised to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,— **Powers of Commissioners when in possession.**

- (1) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exerciseable by the mortgagor or any person claiming through or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same, shall become vested in the secretary of the Commissioners; and
- (2) The Commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in the secretary by this Act; and
- (3) The Commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the Commissioners may think expedient; and
- (4) The Commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest (*a*) from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage; and
- (5) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the Commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorise the purchaser with the like consent to destroy the same, and sell or authorise the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the Commissioners, nor their secretary, nor the purchaser so authorised, nor his representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction; and the provisions of this Act with respect to the sale of any mortgaged property shall apply to any sale under this section; and
- (6) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the Commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the taking of possession become vested in the secretary of the Commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom the same would

Section 22.

have been vested if possession had not been taken, but the Commissioners may, if they think fit, on the relinquishment of possession, reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them :

- (7) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act.

(a) Not less than 5 per cent. See the Public Works Loans Act, 1881, s. 7, *post*, p. 4621.

Powers in relation to rate where default made.

23. Where a loan made by the Commissioners is secured by the mortgage of a rate (whether with or without any other security), and the Commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the Commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the Commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the Commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the Commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor.

The Commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the Commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the Commissioners shall be paid by them to the mortgagor.

The Commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revert in the mortgagor, subject to the said reservations and conditions.

Liability of Commissioners after taking possession or in default of payment.

24. When the Loan Commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands.

Sale and mortgage by Commissioners of mortgaged premises.

25. Where the Loan Commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the Commissioners may think proper.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the Loan Commissioners may, if they think fit, sell in such manner and subject to such conditions,

stipulations, and agreements as they may think expedient for the purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof, with a view to the public good or general benefit, or for any other purpose, notwithstanding such conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property. Section 25.

The Loan Commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

26. Every sale or mortgage made by the Commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorised, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire. Purchaser not liable to see to the validity of sale or application of money.

The receipt in writing of the Bank of England, or one of their cashiers or other proper officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable or in any manner accountable for the misapplication or non-application thereof.

27. Any lease, mortgage, conveyance (a), or other disposition made by the secretary of the Commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the Loan Commissioners, or their secretary, either before or after possession taken, and the same shall thereupon be vested in and may be exercised and put in force by such person accordingly. Terms of lease, sale, or mortgage.

Nothing in this Act shall operate to invalidate or affect the rights of any person entitled *bonâ fide* to any debt, estate, or interest, having priority over or ranking *pari passu* with the loan granted by the Commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the Commissioners.

(a) See the definition of a conveyance in s. 51, *post*, p. 4559.

28. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act by or under the direction of the Loan Commissioners of any mortgaged property shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the Commissioners in respect thereof, or otherwise by reason of the default in payment, and secondly in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage. Application of money arising on taking possession, sale, mortgage, etc. by Commissioners.

Section 28. The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or, if the Commissioners think fit, shall be paid by the secretary of the Commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

Payment of loan before it is due, and transfer of security for all or part of loan.

29. The Loan Commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due, and may release or convey the mortgaged property or rate to the person paying the same or as he may direct, upon such terms and conditions and in such manner and form as the Commissioners may think expedient.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the Commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the Commissioners by the conveyance.

The Commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

Discharge of security and revesting of property on repayment of loan.

30. Upon all money due under a mortgage under this Act being fully paid the Commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the Commissioners to be necessary, and upon such receipt being given the mortgaged rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act, shall (unless the Commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof), revert in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the Commissioners.

Bankruptcy debtor.

31. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for the payment thereof or part thereof has not arrived, unless in the case of a surety the Commissioners think fit to accept some other surety.

Form of mortgage.

32. Every security given under this Act may be in such form as may be prescribed (a), and the fact of the secretary of the Loan Commissioners being a party thereto shall be conclusive evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the

estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act (b). Section 32.

(a) See the definition in s. 51, *post*, p. 4559.

(b) By s. 205 of the L. G. A., 1933, *ante*, p. 1041, mortgages, in the case of loans by the Public Works Loan Commissioners, are to be in the form prescribed by the Public Works Loans Acts, 1875 to 1882, and not in that prescribed by the Regulations of 1934 (see *ante*, p. 1041).

33. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of her Majesty, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine; but no person shall be liable for any larger sum than that which he is expressed to be bound to pay. Recovery of debt on personal security.

Every sum payable in respect of a loan granted by the Loan Commissioners (either before or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case (a).

The Loan Commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the Loan Commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an immediate writ of extent, or of *diem clausit extremum*, to issue without any writ of *scire facias* or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the Loan Commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

(a) The Commissioners may reduce the interest on any loan made before this Act to any rate not less than 4 per cent., but this provision is not to take away or abridge the power of the Commissioners to reduce the interest on any loan under the P. H. A., 1875, s. 243 (13 Halsbury's Statutes 726; now replaced by the P. H. A., 1936, s. 311, *ante*, p. 659). See the Public Works Loans (Money) Act, 1876, s. 6, *post*, p. 4562.

34. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the Loan Commissioners of recovering or enforcing payment of any sum due in respect of such loan (a). Recovery of loan after the expiration of term for repayment.

(a) This provision appears to meet a difficulty such as occurred in *R. v. Wigan*, *ante* p. 1033.

SUPPLEMENTAL PROVISIONS AS TO LOANS AND SECURITIES.

35. Where the Commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to her Majesty or otherwise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest to the public. Security for completion of works partly finished or not commenced.

Section 36.

Examination
as to proper
application of
moneys lent.

36. Where the Loan Commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section, and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor (*a*).

(*a*) This section is amended by the Public Works Loans Act, 1878, s. 4 (giving power to the Commissioners to enforce the proper application of the loans by *mandamus*), *post*, p. 4602, and by the Public Works Loans Act, 1881, ss. 8, 9 (giving power to make and enforce orders as to expenses of inquiries into the application of loans and providing for the application of unapplied balances), *post*, p. 4621. For the powers of a poor law inspector, see the Poor Law Act, 1930, s. 160 (12 Halsbury's Statutes 1045).

Suspension of
payment of
principal and
interest.

37. The Treasury may, on the recommendation of the Loan Commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the Commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorise.

Change of
security.

38. The Loan Commissioners may, subject to the prescribed regulations if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the Commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Concurrence by
Commissioners
in leases, sales,
etc. of
mortgaged
property.

39. The Loan Commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

SPECIAL PROVISIONS AS TO BORROWERS.

Power to
various autho-
rities to mort-
gage and levy
rates.

40. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the Loan Commissioners in accordance with this Act (*a*).

The council of any borough may borrow money from the Loan Commissioners for the purpose of building, rebuilding, enlarging, repairing, improving,

and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the borough rate to the Loan Commissioners in accordance with this Act (b). Section 40.

The said justices and council respectively (b) shall have power to give the mortgage in such manner and form as the Loan Commissioners may direct.

(a) County loans are now raised by the county council under Part IX. of the L. G. A., 1933, *ante*, p. 1023, and securities for loans previously raised by the justices were discharged by the county council under s. 122 (1) of the L. G. A., 1888.

(b) This paragraph and the words "and council respectively," are repealed as to boroughs within the Municipal Corporations Act, 1882 (see Sched. I., Part 2, of that Act; 10 Halsbury's Statutes 659, now repealed), because other provision was made, which is now Part IX. of the L. G. A., 1933.

MISCELLANEOUS.

41. The Loan Commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings of the Commissioners and the authentication of documents made or issued or directions given or acts done by them, and with respect to loans under this Act and application therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the applicants, and with respect to the forms to be used, including the forms of the securities, and with respect to any fees or sums to be paid by the applicants or by other persons dealing with such Commissioners, and with respect to the relations between such Commissioners and the National Debt Commissioners and the Bank of England. Regulations by Commissioners (a).

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they think fit, shall be published in the London Gazette, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section, shall after the expiration of six months after its publication in the London Gazette be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

(a) Regulations have been made under this section, and will be found set out, *ante*, p. 3186.

42. [*Payment of fees and other sums into the Exchequer*] (a).

(a) Repealed by S. L. R. A., 1883 (18 Halsbury's Statutes 986).

43. The Loan Commissioners shall keep at the Bank of England such account, and under such title as the Treasury may from time to time direct, and every such account shall be deemed to be a public account.

Such accounts as the Treasury may from time to time direct of all moneys issued from or payable to the Consolidated Fund in pursuance of this Act

Section 43. during every financial year, and of all transactions under this Act during that year, including all sums due for the time being from any person in respect of any loan granted by the Loan Commissioners either before or after the passing of this Act, shall be kept by the National Debt Commissioners and the Loan Commissioners respectively, and such other persons (if any), and be audited by the Comptroller and Auditor-General in such manner as the Treasury may from time to time direct.

Perjury. **44.** Any person who, . . . (a) for the purpose of obtaining a loan under this Act, wilfully gives information to such Commissioners which is false in any material particular, shall be guilty of perjury.

(a) Some words here repealed by the Perjury Act, 1911 (4 Halsbury's Statutes 772).

Authority, and
laying before
Parliament
Treasury
warrants.

45. The warrant of the Treasury issued under the authority of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed to be done for the purposes of this Act, and copies of any such warrant relating to the borrowing of money shall be laid before both Houses of Parliament, within one month of the date thereof, if Parliament be then sitting, and if not within one month after the then next meeting of Parliament.

Receipt for
money payable
on account of
loan, etc.

46. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted under this Act, or of any sum due under any security made under this Act or otherwise payable to or by the direction of the Loan Commissioners or their secretary, shall be a complete discharge to the person paying the same.

Notices may be
served by post.

47. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post.

Notices to and
by Commis-
sioners.

48. Notices, and documents required by this Act, or by any regulation made under this Act, to be served on the Loan Commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the Commissioners.

Notices and documents required for the purposes of this Act or of any regulation made thereunder, to be served by or on the Loan Commissioners, or to be made or issued by the Loan Commissioners, shall be in writing or in print, or partly in writing and partly in print.

Effect of
schedules.

49. The Schedules to this Act shall be construed and have effect as part of this Act.

Application of
Act to loans
under special
Acts.

50. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the Loan Commissioners shall, notwithstanding any provision in such special Act (a) and any rule of law

or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act; and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act. Section 50.

(a) As to the meaning of this term, see s. 18, note (a), *ante*, p. 4550.

51. In this Act, if not inconsistent with the context—

Definitions.

The expression “person” includes a body of persons, whether corporate or unincorporate (a):

The expression “financial year” means the year ending the thirty-first day of March:

The expression “prescribed” means prescribed by the regulations made under this Act with the approval of the Treasury:

The expression “special Act” means any Act passed before the passing of this Act which authorises the Loan Commissioners to lend money for the purposes of any work mentioned in the First Schedule to this Act and any Act passed after the passing of this Act, which authorises the Loan Commissioners to lend money for any purpose (b):

The expression “security” includes a mortgage:

The expression “mortgage” includes a charge and any instrument in the nature of a mortgage or charge, and in Scotland any heritable security:

The expression “conveyance” includes any grant, assignment, transfer, or other disposition or assurance; and the expression “convey” shall be construed accordingly:

The expression “rate” means a rate, cess, or assessment the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levying of a rate includes the issue and enforcement of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly:

Any toll, due, rent, imposition, and other sum not being a rate as above defined shall be deemed to be property for the purposes of this Act.

All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors heirs executors administrators and assigns of, or other persons claiming through or under such mortgagor or borrower.

(a) Definitions of “the Treasury,” “National Debt Commissioners,” and “Bank of England,” are here repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury’s Statutes 1014), their places being now supplied by the definitions enacted by the Interpretation Act, 1889, s. 12 (*op. cit.* 994).

(b) See note (a) to s. 18, *ante*, p. 4550.

Temporary Provisions and Repeal.

52. [*First commissioners*] (a).

(a) Repealed by the S. L. R. A., 1883 (*op. cit.* 986).

53. [*Existing officers of commissioners*] (a).

(a) Repealed by the S. L. R. (No. 2) A., 1893.

Section 54. 54. [*Sending of statements, etc., before commencement of Act*] (a).

(a) Repealed by the S. L. R. A., 1883.

Reference in
Act to repealed
Acts.

55. A reference in any Act to any enactment hereby repealed, or to the commissioners for the execution of any Act hereby repealed, shall, so far as is consistent with the tenor thereof, be deemed to refer to the corresponding enactment in this Act and to the Public Works Loan Commissioners under this Act.

Saving for loans
and transac-
tions under
repealed Acts.

56. Save as otherwise provided by this Act this Act shall apply only to loans granted and securities made after the commencement of this Act.

The Loan Commissioners shall have the same power of making further advances on any mortgages made before the commencement of this Act and intended to secure more than the sum which has actually been advanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The Loan Commissioners, on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing, may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the Loan Commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners, secretary, and officers as the commissioners, secretary, and officers under the Acts in pursuance of which such loan was granted and securities made; and all securities and documents relating to such commissioners, secretary and officers shall be construed accordingly.

Repeal of Acts.

57. (a) . . . so much of any . . . enactment as authorises any loan by the Public Works Loan Commissioners for the purpose of any work other than a work mentioned in the First Schedule to this Act, or as is otherwise inconsistent with this Act, is hereby repealed . . .

Provided that—

(1) The repeal of an enactment by this Act shall not affect—

(b) Any power to make or levy rates, or any other power capable of being exercised for the purpose of enabling or compelling the repayment of any money due on account of any loan granted by the Public Works Loan Commissioners before the commencement of this Act, whether the same or any part thereof has been actually advanced before or after such commencement.

(a) This section is printed with the omission of parts repealed by the S. L. R. (No. 2) A., 1893 (18 Halsbury's Statutes 1014), and the S. L. R. A., 1883 (*op. cit.* 986).

SCHEDULES.

FIRST SCHEDULE (a).

WORKS FOR THE PURPOSE OF WHICH THE COMMISSIONERS MAY LEND MONEY.

Baths and washhouses provided by local authorities.

Burial grounds provided by burial boards . . .

Conservation or improvement of rivers or main drainage (b).

Docks.

Harbours and piers, and any work for which the Public Works Loan Commissioners are authorised to lend by section 3 of the Harbours and Passing Tolls, etc. Act, 1861. **Schedules.**

Improvement of towns.

24 & 25 Vict.
c. 47.

Labourers dwellings.

Lighthouses, floating and other lights for the guidance of ships, buoys, and beacons.

Lunatic asylums of any county or borough in Great Britain . . .

Police stations and justices rooms of any county or borough in Great Britain, and the offices connected therewith . . .

Prisons.

Public libraries and museums.

Any schoolhouse or work for which a school board is authorised to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same . . . 33 & 34 Vict.
c. 75.

Waterworks established or carried on by a sanitary or other local authority.

Workhouses or poorhouses, and any work for which guardians of the poor . . . 36 & 37 Vict.
c. 86.

are authorised to borrow under the general Acts relating to the relief of the poor.
Any work for which a sanitary authority are authorised to borrow under the Public Health Act, 1875.

38 & 39 Vict.
c. 55.

Any work for which the Commissioners are authorised to lend by any Act passed after the passing of this Act (c).

(a) Parts of this Schedule relating to Scotland only are omitted.

(b) This includes works of underground drainage. See the Public Works Loans Act, 1894, s. 3, *post*, p. 4929.

(c) See, for example, the Public Works Loans Act, 1896, s. 2, *post*, p. 4940; the Small Dwellings Acquisition Act, 1899, s. 9 (7), *ante*, p. 1805; the Public Works Loans Act, 1908, s. 6 (purposes of the Territorial and Reserve Forces; 12 Halsbury's Statutes 302); the Housing Act, 1936, s. 123, *ante*, p. 1727; the Public Health Act, 1936, s. 311, *ante*, p. 659.

[Sect. 4.]

SECOND SCHEDULE.

FORM OF DECLARATION.

I, A. B., do hereby declare that according to the best of my judgment I will faithfully and impartially execute the powers and duties of a Public Works Loan Commissioner according to law (a).

(a) The Third Schedule was repealed by the S. L. R. (No. 2) A., 1893.

* * * * *

Section 1.

THE PUBLIC WORKS LOANS (MONEY) ACT, 1876.

(39 & 40 VICT. c. 31) (a).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners, and to amend the Public Works Loans Act, 1875.

[24th July, 1876.]

PRELIMINARY.

Short title.

1. This Act may be cited as the Public Works Loans (Money) Act, 1876.

(a) The preamble to this Act was repealed by the S. L. R. A., 1894, and by s. 4 of that Act (18 Halsbury's Statutes 1020) it was enacted that in any revised edition of the Statutes published by authority, the clause of enactment may be omitted. It is accordingly omitted here and in every subsequent Act in this work.

As to the subject of this Act, see also the Acts mentioned in note (a) to the Public Works Loans Act, 1875, *ante*, p. 4544.

2. [*Commencement of Act*] (a).

(a) Sections 2, 4, 5, and parts of ss. 6 and 7, here omitted, were repealed by the S. L. R. A., 1894 (*op. cit.* 1019). In s. 6, certain words relating to Scotland only are also omitted.

3. [*Issue of money for loans*] (a).

(a) This section was repealed by the S. L. R. A., 1883 (*op. cit.* 986).

AMENDMENT TO PUBLIC WORKS LOANS ACT, 1875.

4. [*Application of Public Works Loans Act, 1875, s. 56, ante, p. 4560*] (a).

(a) See note (a) to s. 2, *supra*.

5. [*Removal of doubt as to Harbour of Colombo Loan Act, 1874*] (a).

(a) See note (a) to s. 2, *supra*.

Explanation of
38 & 39 Vict.
c. 89, s. 33, as to
reduction of
interest on loans
to sanitary
authorities.

6 (a). . . . Nothing in the Public Works Loans Act, 1875, shall be deemed to take away or abridge the power of the Loan Commissioners under section two hundred and forty-three of the Public Health Act, 1875, . . . to reduce, if they think fit, any interest payable on any such loan to a local authority as is in those sections mentioned.

(a) See note (a) to s. 2, *supra*.

Explanation
of ss. 18, 50 of
38 & 39 Vict.
c. 89.

7 (a). . . . Sections eighteen and fifty of the Public Works Loans Act, 1875 (b), shall be construed as if "special Act" in those sections included any Act relating to any person having power to borrow money from the Public Works Loan Commissioners.

(a) See note (a) to s. 2, *supra*.

(b) See the sections referred to, *ante*, pp. 4549, 4558.

8. [*Issue for adjustment of accounts prior to 1st April, 1876*] (a).

(a) This section was repealed by the S. L. R. A., 1883.

THE COMMONS ACT, 1876.

Section 1.

(39 & 40 VICT. c. 56) (a).

An Act for facilitating the Regulation and Improvement of Commons, and for amending the Acts relating to the Inclosure of Commons.

[11th August, 1876.]

1. This Act may be cited for all purposes as the Commons Act, 1876. Short title.

(a) The preamble to this Act reciting the Inclosure Acts, 1845 to 1868 (2 Halsbury's Statutes 443, 575), was repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). The powers and duties of the Inclosure Commissioners were by the Settled Land Act, 1882, s. 48, transferred to the Land Commissioners, and by the Board of Agriculture Act, 1889, s. 2 (3 Halsbury's Statutes 401), the powers and duties of the latter were transferred to the Board of Agriculture, now the Minister of Agriculture and Fisheries (see Ministry of Agriculture and Fisheries Act, 1919; *op. cit.* 451). Throughout this Act, therefore, it is necessary to substitute the Minister of Agriculture and Fisheries for the Inclosure Commissioners.

This Act confers on urban sanitary authorities important powers and duties with respect to suburban commons, which are extended to rural district councils in certain cases under s. 26 (2) of the L. G. A., 1894, *post*, p. 4908. See also the Commons Act, 1899, *post*, p. 4982, and reference should be made to the Law of Property Act, 1925, ss. 193 and 194, *post*, Vol. V.

PART I.

LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS.

Applications in relation to Commons.

2. The Inclosure Commissioners (a) may entertain an application made in manner in this Act mentioned for a Provisional Order— Alternative Provisional Order for regulation or inclosure of commons.

(1) For the regulation of a common; or

(2) For the inclosure of a common or parts of a common.

Further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the Provisional Order.

The Commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the application represent at least one-third in value (b) of such interests in the common as are proposed to be affected by the Provisional Order.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *supra*. The consent of the Minister is also necessary to an inclosure or approvement under the Statute of Merton and the Statute of Westminster the Second, or either of such statutes. See the Law of Commons Amendment Act, 1893, s. 1 (2 Halsbury's Statutes 606). Nothing in the Copyhold Act, 1894, authorises a lord to enclose any common or waste land (s. 95; 3 Halsbury's Statutes 629).

A much less cumbrous and expensive method than that afforded by this Act of providing for the regulation of a common is now given by the Commons Act, 1899, *post*, p. 4982. See s. 194 of the Law of Property Act, 1925, Vol. V., *post*, for a restriction on the inclosure of commons.

(b) As to the method of arriving at the value, see Hunter on Open Spaces, 2nd ed., pp. 136—138.

3. A Provisional Order for the regulation of a common may provide, "Regulation of common" generally or otherwise, for the adjustment of rights in respect of such common, includes and for the improvement of such common, or for either of such purposes, adjustment of rights and or for any of the things by this Act comprised under the expression "adjust-improvement."

Section 3. ment of rights" or "improvement of a common," or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the Provisional Order by Parliament.

Explanation of
adjustment of
rights.

4. The adjustment of rights (a) in respect of a common comprises for the purposes of this Act all or any of the following things :

- (1) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised (b) ;
- (2) As respects rights of common of turbary, or taking of estovers (a), or taking gravel, stone (c), or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights which may permanently injure the common (d) ;
- (3) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land ;
- (4) As respects any common whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction modification or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land ; and
- (5) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which, settlement may be conducive to the interests of all or any class of persons interested in the common.

(a) The destruction of an ancient house to which rights of common were appurtenant does not necessarily operate as an abandonment of those rights (*Att.-Gen. v. Reynolds*, [1911] 2 K. B. 888 ; 11 Digest 16, 175).

(b) As to commonable animals straying from unenclosed common land into an adjacent close and the obligation to provide fences on the part of the owner of such close, see *Coaker v. Willcocks*, [1911] 2 K. B. 124 ; 7 Digest 295, 209. See also *Holgate v. Bleazard* [1917] 1 K. B. 443 ; 33 T. L. R. 116 ; 2 Digest 225, 178.

(c) See *Malvern Hill Conservators v. Whitmore* (1909), 73 J. P. 329 ; 100 L. T. 841 11 Digest 42, 578.

(d) Where under an Inclosure Act, 1802, s. 13, part of a waste was allotted to the lord in trust for the cottagers as a turf common, and subsequently a railway company took part of this turf common, it was held that the lord was entitled to so much of the fund in court as represented the value of the soil (*Att.-Gen. v. Meyrick*, [1893] A. C. 1; 75 J. P. 212; 11 Digest 29, 366).

**Note to
Section 4.**

5. The improvement of a common comprises for the purposes of this Act all or any of the following things; that is to say, Explanation of improvement.

- (1) The draining, manuring, or levelling the common; and
- (2) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common; and
- (3) The making or causing to be made byelaws (a) and regulations for the prevention of or protection from nuisances or for keeping order on the common; and
- (4) The general management of such common;
- (5) The appointment from time to time of conservators of the common for the purposes aforesaid.

(a) See ss. 16, 17, *post*, p. 4574.

6. A Provisional Order for the inclosure of a common means a Provisional Order for inclosing the common, as provided by the Inclosure Acts, 1845 to 1868, as amended by this Act. Meaning of Provisional Order for inclosure.

7. In any Provisional Order in relation to a common, the Inclosure Commissioners (a) shall, in considering the expediency of the application, take into consideration (b) the question whether such application will be for the benefit of the neighbourhood (c), and shall, with a view to such benefit, insert in any such Order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood (d)) as are applicable to the case; that is to say. Provisions for the benefit of a neighbourhood.

- (1) That free access is to be secured to any particular points of view; and
- (2) That particular trees or objects of historical interest are to be preserved; and
- (3) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common (e); and
- (4) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious; and
- (5) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(b) The Minister of Agriculture and Fisheries is required to have regard to the same considerations in giving his consent to an inclosure or approvement under the Statute of Merton and the Statute of Westminster the Second, or either of those statutes (The Law of Commons Amendment Act, 1893, s. 3; 2 Halsbury's Statutes 606).

(c) This expression by the preamble to the Act was explained to include "the health, comfort, and convenience of the inhabitants of any cities, towns, villages, or populous places in or near any parish in which the land proposed to be inclosed or any part thereof might be situate." See s. 193 of the Law of Property Act, 1925, and the Access to Mountains Act, 1939; Vol. V. and 32 Halsbury's Statutes 511, for rights which are available to the public over waste lands, commons, mountains and moorlands.

(d) Any of these statutory provisions for the benefit of the neighbourhood may be

**Note to
Section 7.**

included in a scheme made by an urban or rural district council under the Commons Act, 1899, s. 1, *post*, p. 4982.

(e) See *Mitcham Common Conservators v. Cox*, [1911] 2 K. B. 854; 75 J. P. 471; 11 Digest 88, 1078, and *Harris v. Harrison* (1914), 78 J. P. 398; 30 T. L. R. 532; 11 Digest 89, 1080.

Suburban Commons (a).

Sanitary
authorities to be
represented in
the case of
commons in the
neighbourhood
of towns.

8. Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns, or within six miles (b) of any town or towns (which common so situate is in this Act referred to as a suburban common) shall be served as soon as may be on the urban sanitary authority or authorities having jurisdiction over such town or towns, and it shall be lawful for the urban sanitary authority of any such town to appear before the assistant commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the Inclosure Commissioners (c), and to make to him or them, at any time during the proceedings in relation to obtaining a Provisional Order under this Act, such representations as they may think fit with respect to the expediency or in expediency of such application, regard being had to the health comfort and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners (c), enter into an undertaking to contribute out of their funds for or towards the maintenance of recreation grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

An urban sanitary authority may acquire by gift and hold without licence in mortmain on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners (c) in pursuance of this Act, and any rights in such a common (d).

They may also in the case of any such suburban common purchase (e) and hold as aforesaid, with a view to prevent the extinction of the rights of common (f), any saleable rights in (g) common or any tenement of a commoner having annexed thereto rights of common.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the Provisional Order, make an application to the Inclosure Commissioners for the regulation of such common with a view to the benefit of their town and the improvement of such common.

Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common, such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient.

. . . (h).

Section 8.

A town for the purposes of this section means any municipal borough, or Improvement Act district, or Local Government district, having a population of not less than five thousand inhabitants.

The population of any town for the purposes of this Act shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance.

(a) By s. 26 (2) of the L. G. A., 1894, *post*, p. 4908, any district council may, with the consent of the county council for the county within which any common land is situate, exercise in relation to any common within their district all such powers as may, under s. 8 of this Act, be exercised by an urban sanitary authority in relation to any common referred to in that section; and notice of any application to the Minister of Agriculture (and Fisheries, as he is now called) in relation to any common within their district shall be served upon the district council, and by s. 26 (3) a district council may for the purpose of carrying into effect this section institute or defend any legal proceedings, and generally take such steps as they deem expedient.

(b) Measured in a straight line on a horizontal plane. See Interpretation Act, 1889, s. 34 (18 Halsbury's Statutes 1004).

(c) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(d) The words "any rights in such a common" probably refer to limited interests in the soil, such as that of a tenant for life. It is thought they would enable a local authority to take a lease of a common (Hunter on Open Spaces, 2nd ed., p. 106). This Act, except s. 20, *post*, p. 4575, did not apply to metropolitan commons (see s. 35, *post*, p. 4580), but the power conferred under this section was extended to the Metropolitan Board of Works by the Metropolitan Commons Act, 1878 (2 Halsbury's Statutes 602), and the powers of that Board are now transferred to the London C. C. by the L. G. A., 1888, s. 40.

(e) Alternatively an urban district council might purchase or lease the common under s. 164 of the P. H. A., 1875 (13 Halsbury's Statutes 693).

(f) But purchase of rights to products such as wood, turf, or gravel in soil which cannot in the ordinary course of nature produce any more wood, turf, or gravel, will not prevent inclosure. See *Peardon v. Underhill* (1850), 16 Q. B. 120; 15 J. P. 705; 11 Digest 17, 186.

(g) *Sic* in Parliament Roll. Probably a misprint for "of."

(h) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1282; they dealt with expenses, as to which see now *ibid.*, ss. 185, 188, *ante*, pp. 1013, 1015.

Procedure.

9. The Inclosure Commissioners (a) shall from time to time, upon application made by the persons interested in any common (b), issue in such form as they may deem expedient information and directions as to the mode in which applications for the regulation or inclosure of commons under the Inclosure Acts, 1845 to 1863, as amended by this Act are to be made to the Commissioners, with such explanations as they may think fit with respect to the law for the regulation and inclosure of commons, and the persons so interested may apply accordingly in manner directed by the Inclosure Commissioners (a).

Issue of forms by Commissioners.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(b) Application may now also be made by parish councils. See the L. G. A., 1894, s. 8 (1) (c), *post*, p. 4896. And that section also provides that notice of any application to the Board (now Minister) of Agriculture and Fisheries in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate (The L. G. A., 1894, s. 8 (4), *post*, p. 4898).

10. The following rules shall be observed with respect to an application to the Inclosure Commissioners (a) for a Provisional Order for the regulation or inclosure of a common; that is to say,

Rules as to application to Commissioners

Section 10.

Publication of
notices of
application.

- (1) The applicants previously to making their application shall publish, in such manner as the Inclosure Commissioners (a) may from time to time, by general or special order, direct, an advertisement giving notice of their intention to apply for such Provisional Order, and shall also serve a like notice on any urban sanitary authority entitled under this Act to receive such notice: Provided, that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates:

Manner of
application.

- (2) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustment of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form and be made in such manner as the Inclosure Commissioners (a) may from time to time direct:

Evidence to be
furnished in
support of
application.

- (3) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners (a), in answer to questions previously submitted or otherwise in such manner as the said Commissioners may from time to time direct, with information bearing on the expediency of the application considered in relation to the benefit of the neighbourhood as well as to private interests:

Evidence in
relation to
benefit of
neighbourhood.

- (4) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbourhood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site extent and suitability of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes; and as to any other matter which in the judgment of the Inclosure Commissioners (a) may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to the benefit of the neighbourhood, and if acceded to, as to what statutory provisions as defined by this Act ought to be inserted in the Provisional Order for the benefit of the neighbourhood:

The Inclosure Commissioners (a) shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood:

Evidence in
relation to
private
interests.

- (5) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following; that is to say, as to the extent and nature of the common to which the application

relates ; as to the mines minerals or valuable strata (if any) under the same ; as to the questions of boundary (if any) concerning such common, or such mines minerals or strata ; as to the parties interested in such common, and the numbers and proportion in value of interest who have consented to or dissented from the application ; as to the nature of the rights requiring the intervention of the Inclosure Commissioners (a) or the interference of Parliament ; as to the supposed advantages of the application being acceded to ; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the Provisional Order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected ; and as to any other matter which in the judgment of the Inclosure Commissioners (a) may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions ought to be inserted in the Provisional Order for the protection of private interests :

- (6) The Inclosure Commissioners (a) shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an Assistant Commissioner, that a *prima facie* case has been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local inquiry to be held by an Assistant Commissioner.

Duty of Commissioners on application.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

11. The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners (a) :

Rules as to local inquiry.

- (1) The Assistant Commissioner appointed to hold such inquiry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common : Provided always, that one at least of such public meetings shall be held in the evening between the hours of seven and ten of the clock (b).
- (2) The Assistant Commissioner shall give not less than twenty-one days notice of his intention to hold the first of such meetings.
- (3) The notice shall, in such form as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one and held for the purpose of enabling the Assistant Commissioner to hear all persons desirous of being heard on the subject-matter of the application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject-matter of the inquiry.
- (4) The notice shall be given—
 - (a) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate ; and
 - (b) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in

Inspection and public meeting.

Notice of meeting.

Contents of notice.

Publication of notice.

Section 11.

which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are usually posted; and

- (c) By advertising in such manner as the Inclosure Commissioners (a) may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.

Conduct of
meeting.

- (5) The Assistant Commissioner shall preside and regulate the proceedings at such meetings, and shall hear all persons desirous of being heard in relation to the subject-matter of the inquiry. He may adjourn any such meeting from time to time, or from place to place, on giving such notice of adjournment as he thinks best calculated to ensure publicity.

Personal
inquiries by
Assistant
Commissioner.

- (6) The Assistant Commissioner shall also make any inquiries and do any other acts which he may be instructed by the Inclosure Commissioners (c) or may think it advisable to do, for the purpose of enabling the Commissioners to judge as to the expediency of making the Provisional Order applied for, also as to the nature of the provisions to be inserted in any such Provisional Order if made.

Report of
Assistant
Commissioner
to Inclosure
Commissioners.

- (7) The Assistant Commissioner shall report in writing to the Inclosure Commissioners (a) the result of the local inquiry, and of the public meeting or meetings held by him (in such form and with such details as the Inclosure Commissioners (a) may from time to time direct), and specially shall report to the Inclosure Commissioners (a) the information obtained by him as to the several particulars in respect of which the applicants for a Provisional Order are by this Act required to furnish information to the Inclosure Commissioners (a).

He shall also report the number of persons who attended the meetings held by him, the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted in the Provisional Order for the benefit of the neighbourhood or for the protection of private interests, and any other circumstances which he may think expedient, with a view to enable the Inclosure Commissioners (a) to judge of the expediency of making the Provisional Order, having regard as aforesaid, and also, if the Order be made, of the provisions to be inserted therein.

Map to
accompany
report.

- (8) The report shall be accompanied by an outline or other map on such scale and of such a description as may be directed by the Inclosure Commissioners (a), with a sketch in the case of an inclosure of a common being waste of land of a manor, of the allotments (if any) proposed to be made for recreation grounds and field gardens, or for either of such purposes.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(b) It is the practice of the Minister to hold two meetings—one in the morning and the other in the evening.

Rules as to
Provisional
Orders.
Draft Pro-
visional Order
to be framed.

12. The following rules shall be observed with respect to Provisional Orders to be made by the Inclosure Commissioners (a); that is to say (b),

- (1) The Inclosure Commissioners (a), if satisfied by the report of the Assistant Commissioner or by further inquiries to be made by themselves or an Assistant Commissioner, that, having regard to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, shall frame in such form

and with such provisions as they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of Provisional Order applied for, a draft Provisional Order for the consideration of the persons interested in the common, specifying, if such application is for the regulation of a common, whether all or any one or more of the provisions of this Act for the adjustment of rights and the improvement of a common are to be put in force :

Section 12.

- (2) With respect to provisions for the benefit of the neighbourhood, there shall be inserted in such draft Provisional Order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case ; also, if the order is an inclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and field gardens : Provisions for benefit of neighbourhood.
- (3) With respect to private interests, there shall be inserted in such draft Provisional Order, (1) where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected ; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts, 1845 to 1868, or as may appear to the Inclosure Commissioners (a) proper to be inserted ; also, if there are any other rights which appear to the Commissioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf : Provisions for protection of private interests.
- (4) As soon as may be after making their draft Provisional Order, the Inclosure Commissioners (a) shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order that the same may be considered by the parties interested therein, and they shall give notice, in such manner as they think best calculated to secure publicity, of such deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto : Deposit of draft order for consideration of parties interested.
- (5) The Inclosure Commissioners (a) shall not certify the expediency of a draft Provisional Order unless they are satisfied that persons representing at least two-thirds in value of such interests in the common as are affected by the order consent thereto ; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his manor, then, unless there is more than one person interested in such manor according to the definition of the Inclosure Act, 1845, the Commissioners shall not certify the expediency of the same, unless the person interested in the common in right of such manor, or his substitute under the said Inclosure Act, 1845, consent to such order ; and where there is more than one person interested in such manor the Commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the Commissioners (c) : Consents before Provisional Order certified to be expedient.
- (6) Where the freemen, burgesses, or inhabitant householders of any city borough or town are entitled to rights of common or other interest in the common to which the draft Provisional Order relates, the Reservation in favour of freemen interested in common.

8 & 9 Vict. c. 113.

Section 12.

Inclosure Commissioners (a) shall not certify the expediency of such Order unless it appears to the Commissioners that two-thirds in number of such of the freemen and burgesses so entitled as may be resident in such city borough or town, or within seven miles thereof, or of such inhabitant householders, as the case may be, have consented to the Order; and in case two-thirds in number of such resident freemen and burgesses, or of such inhabitant householders have so consented, such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled:

Means of
obtaining
consents.

- (7) The Inclosure Commissioners (a) may cause a meeting or meetings to be held by an Assistant Commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interests of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:

Power to
modify Pro-
visional Order
before ex-
pediency
certified.

- (8) The Inclosure Commissioners (a) may, at any time before certifying the expediency of a draft Provisional Order, modify the same, of their own mere notion, or on the suggestion of any parties interested, but such modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft Provisional Order originally deposited by the Commissioners:

Certificate of
expediency of
Provisional
Order.

- (9) When the necessary consents have been obtained to any draft Provisional Order as originally deposited, or as modified in pursuance of this Act, such Order shall be deemed to be final; and the Inclosure Commissioners (a) shall in a report or reports to be made from time to time, as respects each Provisional Order which has become final as aforesaid, certify that it is expedient that such Provisional Order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each Provisional Order, they shall, in such manner as they think best adapted to enable Parliament to judge of the expediency of such Order, state the information furnished to them as to the several particulars in respect of which the applicants for a Provisional Order are by this Act required to furnish information to the Commissioners; also the result of the local inquiry, and of the number and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the Commissioners may think it expedient to state for such purposes as aforesaid:

Confirmation of
Provisional
Order.

- (10) Every report made by the Inclosure Commissioners (a) certifying the expediency of any Provisional Order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any Order for the regulation or inclosure of a common, the expediency of which has been so certified by the Commissioners, shall be confirmed, the regulation or inclosure of any common to which any such Order relates shall be proceeded with and completed according to the terms of the Provisional Order relating to such common, and to the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a Provisional Order, until such Act of Parliament as aforesaid

has been passed in relation thereto, shall not be of any validity whatever: **Section 12.**

- (11) If, after the presentation to Parliament of a report made by the Inclosure Commissioners (a) certifying the expediency of any Provisional Order for the regulation or inclosure of a common, and before a Bill has been brought in for the confirmation of such Order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such Provisional Order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the Provisional Order accordingly, but such modifications shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft Provisional Order originally deposited by the Commissioners:

Supplemental power to modify Provisional Order after expediency certified.

And it shall be the duty of the Commissioners (a) to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the Commissioners shall make a special report to the effect that the Order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament; and thereupon the Order so modified shall be deemed to be in the same position in all respects as if it were an Order in respect of which a report had been made by the Commissioners certifying the expediency thereof, and such report had been presented to Parliament.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(b) In addition to these provisions, the Minister of Agriculture and Fisheries may insert in the Order a provision for the raising and payment of expenses of and incidental to the regulation of the common, either wholly or partly, by a sale of a portion of the common, specifying the situation and maximum quantity sold; the expenses to be raised and paid in manner provided by the Inclosure Acts, 1845 to 1868 (2 Halsbury's Statutes 443, 575) (see the Commons (Expenses) Act, 1878, s. 2; *op. cit.* 601). He may also specify in any Provisional Order for the regulation of a common, as one of the terms and conditions of the regulation, the appropriation of an allotment for the neighbouring poor, in which case the provisions of the Inclosure Acts, 1845 to 1876 (*op. cit.* 443, 579), as to allotments made on enclosure of a common, are to apply (Commons (Expenses) Act, 1878, s. 4 (*op. cit.* 601)).

(c) The necessity for obtaining the consents required by this sub-section was one of the great difficulties in the way of obtaining Provisional Orders under this Act. Under the Commons Act, 1899, *post*, p. 4982, which supplies an alternative and simpler procedure, the necessity for dissent on the part of the lord or commoners, is substituted for the necessity of consent, and in the absence of dissent the scheme goes forward.

13. The Inclosure Commissioners (a) may insert in any Provisional Order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such Order into effect; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed instead of being regulated, and the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, shall apply accordingly.

Partial application of procedure under Inclosure Acts.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

14. A Provisional Order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the Commissioners (a) think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and

Power to raise money for improvement of common.

Section 14. which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common (b).

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(b) The Provisional Order must specify the situation and maximum quantity so sold. The Order may provide for the sale of part of the common in order to raise the expenses necessary for the regulation of the portion retained (Commons (Expenses) Act, 1878, s. 2; 2 Halsbury's Statutes 601). The proceeds may, if the Order so provides, be invested, and the income applied towards the improvement or protection of the common; and the Order may also provide for the sale of all or part of the investment and the application of the proceeds for the like purpose (*ibid.*, s. 3; *op. cit.*).

Supplemental Provisions.

Owners may
make byelaws.
8 & 9 Vict. c.
118.

15. The majority in value of the owners of skirts (a) or rights of pasture in any regulated pasture created under the provisions of the General Inclosure Act, 1845 (b), in addition to the powers they now possess are hereby authorised at any annual meeting for the election of field reeves (c) to make byelaws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management (d), occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such byelaws.

(a) *Sic.* An obvious misprint for "stints." Stints or cattlegaits are rights of pasture for a stinted or limited number of beasts in a common close. See Fitzherbert's *Extenta Manerii*, 12, 13; Elton on Commons, ed. 1868, pp. 34, 35.

(b) See Inclosure Act, 1845, ss. 113 *et seq.*; Inclosure Act, 1852, s. 33; Inclosure Act, 1854, s. 6; Inclosure Act, 1857, s. 2 (2 Halsbury's Statutes 493 *et seq.*, 549, 552, 558).

(c) See Inclosure Act, 1845, s. 117, as to the election of field reeves.

(d) The Commons Act, 1908 (*op. cit.* 614), enables regulations to be made as to turning out entire animals on commons.

Provision as
to byelaws.

16. Any byelaw made in pursuance of this Act, and any alteration made therein, and any revocation of a byelaw, shall not be of any validity until it has been confirmed by one of her Majesty's principal Secretaries of State.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such byelaws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of forty shillings (a).

(a) M. had premises adjoining a common regulated by byelaws under this Act, and at such premises she let ponies for hire. M. at her premises let ponies to be used by two persons on the common, and they used them there:—*Held*, that this was no offence against a byelaw which forbade the letting for hire of ponies on the common (*Marcy v. Morris* (1888), 52 J. P. 168; 11 Digest 88, 1075). Where a local improvement Act authorised conservators of a common to make byelaws for the prevention of and protection from nuisances and for keeping order, N. was charged with placing a boat-van for pleasure on the common contrary to the byelaw without a licence and without payment of the prescribed fee:—*Held*, that the byelaw was not *ultra vires* merely because it prohibited vans being brought on the common without leave without expressly confining such prohibition to cases amounting to nuisances (*Nash v. Manning* (1894), 58 J. P. 718; 11 Digest 88, 1073). In *Scott v. Baring* (1895), 11 T. L. R. 175; 11 Digest 89, 1084, a person was convicted of a contravention of a byelaw against digging loam, etc., made by the conservators of a common under the provisions of a local Act. He set up a claim of right under the authority of the lord of the manor, but it was contended that the question had been already decided in *Robertson v. Hartopp* (1889), 43 Ch. D. 484; 11 Digest 42, 530, that the lord of the manor had no right to dig loam on the common, and that, therefore, the claim of right was unreasonable:—*Held*, on appeal, that the conviction was wrong on the ground that the justices could not decide the question without going into the question of right.

Notice of
application for
confirmation of
byelaws.

17. No such confirmation shall take place unless notice of the intention to apply therefor, stating the effect of this section, has been published by the conservators one month at least before the application.

During one month at least before the application a copy of every byelaw, the making, alteration, or revocation of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such byelaw open for inspection by persons interested, and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding one shilling for each copy.

Section 17.

18. Subject to the terms of the Provisional Order the amount of any compensation to be paid for any restriction modification or abolition of rights in pursuance of an Order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly.

Provision as to certain expenses under order for regulation of a common.

19. Whereas by several awards made under the authority of Inclosure Acts prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments :

Definition of power of Charity Commissioners in certain cases.

And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons :

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same : Be it enacted, that notwithstanding anything in any other Act contained, it shall not be lawful (save as hereinafter mentioned) to authorise the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out : Provided, that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorise the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of the Charitable Trusts Act, 1860, for the establishment of a scheme for the administration of such fuel allotment accordingly ; and provided that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorise the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out, if the Commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained.

23 & 24 Vict. c. 136.

20. Where any common is regulated pursuant to this Act by a Provisional Order of the Inclosure Commissioners (a) confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of the Metropolitan Commons Act, 1866, or the Metropolitan Commons Amendment Act, 1869, or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the Highway Acts (b), . . . shall search for, dig, get, or carry away gravel sand stone or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more justices in petty sessions

Gravel digging.

29 & 30 Vict. c. 122.
32 & 33 Vict. c. 107.

Section 20. assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient (c).

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

(b) Some words are here repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

(c) This section is applied to any common regulated by scheme under Part I. of the Commons Act, 1899, *post*, p. 4982, by s. 8 of that Act.

The justices have an absolute discretion to make or to refuse to make an order under this section (*Hayes Common Conservators v. Bromley R. D. C.*, [1897] 1 Q. B. 321; 61 J. P. 104; 11 Digest 87, 1061).

PART II.

AMENDMENT OF THE INCLOSURE ACTS.

Field Gardens and Recreation Grounds.

Expenses of clearing, draining, and fencing field gardens.

21. Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure: Be it enacted that the valuer shall, unless the Inclosure Commissioners (a) otherwise direct, cause every allotment made for a field garden to be cleared drained fenced levelled and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

Substituted allotments for recreation grounds and field gardens.

22. The provisions (a) of the Inclosure Acts, 1845 to 1868, which authorise the Inclosure Commissioners (b) to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any Provisional Order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

(a) See Inclosure Act, 1845, ss. 30, 73; Inclosure Act, 1846, s. 4 (2 Halsbury's Statutes 452, 474, 519).

(b) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

Situation of allotments for recreation grounds and field gardens.

23. Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated; and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the Commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the Commissioners may, in the Provisional Order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

Field gardens to be free of rent-charge.

24. There shall be repealed so much (a) of the Inclosure Acts, 1845 to 1868, as relates to the charging of an allotment made for the purpose of a field garden with a rent-charge; and every such allotment made after the passing of this Act shall be made free of any such rent-charge.

(a) See Inclosure Act, 1845, ss. 31, 73, 75, 78; Inclosure Act, 1852, s. 18 (2 Halsbury's Statutes 453, 474, 475, 544).

25. [*Allotments for recreation grounds to be vested in churchwardens and overseers*] (a). **Section 25.**

(a) Repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). As to the holding and management of allotments whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants by the parish council, see s. 6 (1) (c) (iii) of the L. G. A., 1894, *post*, p. 4893.

26. (a) . . . Allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same, or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid; Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates taxes tithes tithe rent-charge and the rent-charge charged on the said allotments under the provisions of the General Inclosure Act, 1845, but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

Amendment of law as to letting field gardens.

s. 9 Vict. c. 118.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector, or vicar and churchwardens, overseers (b), managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens (c).

(a) The recital of s. 109 of the Inclosure Act, 1845 (2 Halsbury's Statutes 492), at the commencement of this section, and of s. 73 of that Act (*op. cit.* 474) at the commencement of s. 27, with certain consequential parts of s. 27, were repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019).

(b) Overseers were abolished by the R. and V. Act, 1925, s. 62, *ante*, p. 2222. As to the transfer of property formerly held by overseers, see Arts. 4, 6 and 7 of the Overseers Order, 1927, at p. 3595, *ante*.

(c) In parishes where there is a parish council, the powers and duties of allotment wardens are now exercised and performed by the parish council (Local Government Act, 1894, s. 6 (1) (c) (iii), *post*, p. 4893).

27. (a) . . . The surplus rents arising from recreation grounds shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the recreation grounds or any or them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood (b); and the surplus rents arising from field gardens shall be applied to all or any of the following purposes, and to no other purpose (c); that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

Application of surplus rents of recreation grounds and field gardens.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners (d), sell all or any part of the allotment vested in them, and out of the proceeds of

Section 27. such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided that the Inclosure Commissioners (*d*) shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners (*d*), and shall remain in their hands until such purchase of other land as aforesaid.

(a) See note (a) to s. 26, *ante*, p. 4577.

(b) And also in the improving of any of the field gardens to which this section applies in the same parish or neighbourhood, or maintaining the drainage and fencing thereof (Commons Act, 1879, s. 2; 2 Halsbury's Statutes 603).

(c) But they may also be applied for any of the purposes for which surplus rents arising from recreation grounds may be applied (Commons Act, 1899, s. 16, *post*, p. 4985). And under the same section surplus rents arising from any field garden or recreation ground may be applied towards the redemption of any land tax, tithe rent-charge, or other charge on the garden or ground.

(d) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

Reports by
managers of
recreation
grounds and
field gardens.

28. The trustees of recreation grounds, where such trustees are the overseers (*a*) or churchwardens of a parish, and the allotment wardens of field gardens (*b*) shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners (*c*) direct, make such reports to the said Commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the Commissioners may require.

(a) See note (b) to s. 26, *ante*, p. 4577.

(b) See note (c) to s. 26, *ante*, p. 4577.

(c) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

Town and
village greens.

29. (*a*) . . . An encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground situate, as well as upon the information of such persons as in the said section mentioned (*b*).

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

(a) The recital of s. 12 of the Inclosure Act, 1857 (2 Halsbury's Statutes 560), as to town and village greens was repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). Town or village greens cannot be taken for light railways without the consent of the Minister of Agriculture and Fisheries. They are also "commons" within the meaning of the Commons Act, 1899, *post*, p. 4982, though apparently not "commons" within the meaning of this Act. As to parish councils, see s. 8 of the L. G. A., 1894, *post*, p. 4896.

(b) The Inclosure Act, 1857, s. 12, provides a summary remedy for injury or damage to the fences of or for other nuisances to a town or village green. The penalty for each offence is forty shillings, which with the damage is recoverable summarily before justices. Under that section, however, the proceedings could only be instituted by a churchwarden or overseer, or the person in whom the soil was vested.

Jurisdiction of
county court in
respect of illegal
inclosures.

30. (*a*) A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common

respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure encroachment or nuisance, or to make an order for the removal or abatement of such inclosure encroachment or nuisance. Section 30.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the [Court of Appeal (b)] in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875. 38 & 39 Vict.
c. 77.

The appellate court may on hearing the appeal reverse modify or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure encroachment or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment of any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

(a) Sections 30 and 31 are extended to metropolitan commons by the Metropolitan Commons Act, 1878, s. 3 (2 Halsbury's Statutes 602). For procedure in the county court, see County Court Rules, Order L., r. 9. No special procedure as to appeals is prescribed by the Rules of the Supreme Court, therefore the usual practice under s. 120 of the County Courts Act, 1888 (3 Halsbury's Statutes 882), is applicable in such appeals. See R. S. C., Order LIX., rr. 10, 18. See also the jurisdiction given to county courts as regards the restriction of inclosure of commons given by s. 194 of the Law of Property Act, 1925, Vol. V., *post*.

(b) Substituted for the High Court of Justice by the Administration of Justice (Appeals) Act, 1934, s. 2 (1), Sched., Pt. I. (27 Halsbury's Statutes 459, 460). See also County Courts Act, 1934, s. 105 (*op. cit.*, 141), under which rules for the purpose may be made.

31. Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor (a).

Three months' notice of claim to inclose to be given in the local papers

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

(a) This exception is hardly worded with due legal accuracy. Where all rights of common are released or conveyed to the lord of the manor, the land formerly common becomes freed from them and ceases to be common at all. A person inclosing a common without advertising his intention as required by this section might be indicted for misdemeanor in disobeying the statute, or be restrained by injunction from continuing his

**Note to
Section 31.**

inclosure and ordered to remove it on an information filed by the Attorney-General at the instance of a person interested.

Appointment of
valuer to be
confirmed by
Commissioners.

32. An appointment of a valuer shall not be valid until it has been confirmed by the Commissioners (a). The Commissioners (a) may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the Commissioners (a)) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the Commissioners is appointed.

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

General Amendment.

As to exchanges
and partitions,
8 & 9 Vict. c.
118, s. 105.

33. The provisions of section one hundred and five of the Inclosure Act, 1845, relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange partition and division of intermixed lands carried into effect in pursuance of the Inclosure Acts, 1845 to 1868, by separate orders, and not included in an award of inclosure.

PART III.

MISCELLANEOUS.

Amendment of
law as to
reports.

34. *There shall be repealed so much of section thirty of the Inclosure Act, 1845, as prescribes a limit to the quantity of land to be allotted to recreation grounds; also the twenty-fourth, twenty-fifth, twenty-sixth, and twenty-seventh sections of the Inclosure Act, 1845, and (a) the Inclosure Commissioners (b) shall not be required to repeat, in their general annual report, any of the particulars in relation to the regulation or inclosure of commons which they may have stated in any other reports made by them in pursuance of this Act, in relation to such commons, but they may refer to such other reports, or give a summary thereof, or otherwise deal with the same as may be thought expedient.*

(a) This section was repealed down to this point by the S. L. R. A., 1883 (18 Halsbury's Statutes 986).

(b) Now the Minister of Agriculture and Fisheries. See note (a) to s. 1, *ante*, p. 4563.

Metropolitan
commons.
29 & 30 Vict.
c. 122.
32 & 33 Vict.
c. 107.

35. This Act, save as herein expressly provided (c), shall not apply to any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 and 1869.

(a) See s. 20, *ante*, p. 4575; note (d) to s. 8, *ante*, p. 4567; and note (a) to s. 30, *ante*, p. 4579.

A common
regulated under
Act not to be
inclosed without
sanction of
Parliament.

36. Where an Act of Parliament has been passed confirming a Provisional Order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that Order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

Definitions.

Definitions.

37. In this Act, unless the context otherwise requires,—

“A common” means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868 (a):

“Waste land of a manor” means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number or stints : Section 37.

“Person” includes a body corporate (b) :

“Municipal borough” means any place for the time being subject to the Municipal Corporations Act, 1835, and the Acts amending the same (c) ;

“Improvement Act district” means any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town :

“Local government district” has the same meaning as it has in the Public Health Act, 1875 (d). 38 & 39 Vict.
c. 55.

(a) See s. 4, *ante*, p. 4566.

(b) The definition of “Inclosure Acts, 1845 to 1868” (2 Halsbury’s Statutes 443, 575), and the schedule to this Act to which that definition referred, are repealed by the S. L. R. A., 1894 (18 Halsbury’s Statutes 1019). See now the Short Titles Act, 1896 (*op. cit.* 1021).

(c) Now the boroughs included in Sched. I., Pts. II. and III., of the L. G. A., 1933, *ante*, pp. 1197, 1198.

(d) *I.e.*, any area subject to the jurisdiction of a local board constituted in pursuance of the L. G. Acts before 11th August, 1875, or in pursuance of the P. H. A., 1875 (13 Halsbury’s Statutes 623). It is now synonymous with “county district.”

* * * * *

THE RIVERS POLLUTION PREVENTION ACT, 1876.

(39 & 40 VICT. C. 75.)

An Act for making further Provision for the Prevention of the Pollution of rivers.
[15th August 1876.]

1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876. Short title.

See also the Rivers Pollution Prevention Act, 1893, and the Rivers Pollution Prevention (Border Councils) Act, 1898, *post*, pp. 4872, 4947, and the Salmon and Freshwater Fisheries Act, 1923, ss. 8 and 55 (8 Halsbury’s Statutes 783, 812). By the last mentioned section the operation of the Act in the text and its amending Acts may for the purpose of protecting fisheries be extended to the sea and tidal waters to such extent as may be determined by an order of the Minister of Health, after a local inquiry by two persons appointed respectively by the Ministers of Health and of Agriculture and Fisheries. The order will be provisional only until confirmed by Parliament if, and only if, it is objected to by any local authority or joint board affected by the order. Where an order is operative the definition of “stream” in s. 20, *post*, p. 4597, will be extended in the area covered by the order to include such part of the sea or tidal waters as is specified in the order. No proceedings in respect of the pollution of any part of the sea or tidal waters specified in an order is to be instituted without the consent of the Minister of Health.

The provisions of the Act exceed its title, inasmuch as they not only provide against the pollution of rivers, but also against their obstruction by the placing of solid matters therein. The preamble to this Act was repealed by the S. L. R. A., 1894. See also s. 4 of that Act (18 Halsbury’s Statutes 1020) as to the omission of the clause of enactment.

Section 2

PART I.

LAW AS TO SOLID MATTERS.

Prohibition as
to putting solid
matters into
streams.

2. Every person (*a*) who puts or causes to be put or to fall or knowingly permits (*b*) to be put or to fall or to be carried into any stream (*c*), so as either singly or in combination (*d*) with other similar acts of the same or any other person to interfere with its due (*e*) flow, or to pollute (*f*) its waters, the solid refuse of any manufactory, manufacturing process or quarry (*g*), or any rubbish or cinders, or any other waste (*h*) or any putrid solid matter (*i*), shall be deemed to have committed an offence (*k*) against this Act (*l*).

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose (*m*).

(*a*) Note that the definition in s. 20, *post*, p. 4597, extends this word to any body of persons corporate or unincorporate. Hence associations, or companies, or partners may be answerable as well as individuals.

(*b*) In *Hipkins v. Birmingham and Staffordshire Gas Light Co.* (1860), 6 H. & N. 250; 24 J. P. 438; 38 Digest 31, 175, the word "suffer," which has much the same signification as permit, was held to apply to involuntary omission to prevent. Here there is a limitation, as, by this section, the permission must be with knowledge which implies will, but see now the Rivers Pollution Prevention Act, 1893, *post*, p. 4872. The predecessors of the appellants had made an agreement with the owner of a margarine factory, that he should be entitled, subject to certain conditions, to discharge the effluent from the factory into their sewers. Owing to a breach of this agreement, the soil of a sewage farm, the property of the appellants, became clogged, and consequently offensive matter found its way into the river Brent:—*Held*, that it was the appellants who "caused or suffered to flow or pass" sewage or other injurious matter into the river within s. 13 of the Middlesex County Council Act, 1898 (*Southall and Norwood U. D. C. v. Middlesex C. C.* (1901), 65 J. P. 215; 83 L. T. 742; 44 Digest 43, 309). In 1863 some vacant land adjacent to a river was laid out by the owner for the purpose of erecting woollen mills. A main sewer was constructed which emptied into the river. Six mills were subsequently erected on the land and large quantities of liquid were carried away from them through the sewer. Water-closets for the use of employees had been added to the mills between 1863 and 1913 and were also connected with the sewer; and it was not disputed that noxious and polluting liquid was proceeding from the mills and falling or flowing into the river within the meaning of s. 4 of this Act, *post*, p. 4586. There was no evidence that the landowner had laid out the land as an ordinary building estate, and no dwelling-houses were shown to be connected with the sewer save one which had acquired such a right by special agreement in 1864 for a payment of 5s. a year. In 1891 the local authority by agreement with the owners of the sewer, took a licence to use it, and gave consideration for using it, and agreed that their user was to be postponed to the user of the mill-owners. *Held*, that the sewer had been made by the landowner "for his own profit" within the meaning of s. 13 (1) of the P. H. A., 1875 (13 Halsbury's Statutes 631), and did not vest in the local authority of the district, the primary and main object of the sewer being to obtain increased value from the land by giving a facility for its use for manufacturing purposes and not for sanitation; and held, further, that by entering into the agreement of 1891 the local authority had not permitted the unlawful user of the sewer; namely, the user of it for polluting the river contrary to s. 4 (*West Riding of Yorks Rivers Board v. Linthwaite U. D. C.* (No. 2), (1915), 79 J. P. 433; 13 L. G. R. 772; 41 Digest 17, 134). See as to the meaning of the word "caused" used in the Salmon Fishery Act, 1861, *Moses v. Midland Rail. Co.* (1915), 79 J. P. 367; 25 Digest 48, 437.

(*c*) See the definition in s. 20, *post*, p. 4597.

(*d*) It is not intended by this word to imply any conspiracy or joint action. It is apparently intended to refer to simultaneous action, so that if one manufacturer cast his refuse into the stream with little effect, yet if at the same time other manufacturers cast their refuse therein, the mischief would arise and each would be responsible. See *Blair v. Deakin*, *post*, p. 4583.

(*e*) These words require attention. The flow of a stream raises two considerations: first, as to the velocity of the stream; secondly, as to its course or channel. The velocity and the channel must not be impeded. That is, the stream must not be made to run slower, neither must it be diverted from its proper channel. The word "due" signifies its natural flow. In the case of a pure undisturbed stream, the natural flow would be

ascertained easily, but the case will be different where a stream has long been the subject of impediment. Does the statute contemplate the existing state of things, prohibiting any further impediment, or does it refer back to the original state of the stream, and require the original flow to be restored and kept up? This latter alternative will generally be so impracticable that the former seems the preferable construction.

(f) See in s. 20, *post*, p. 4597; as to what is not polluting. It will be remembered that s. 68 of the P. H. A., 1875, *ante*, p. 4347, provides for the pollution of water by gas washings. It appears from the cases of *Filbey v. Combe* (1837), 2 M. & W. 677; 1 J. P. 188; 38 Digest 236, 654, and *Law v. Dodd* (1848), 1 Exch. 845; 12 J. P. 677; 38 Digest 236, 655, that the refuse of a manufactory is that which the manufacturer himself contemplates as rubbish.

(g) Section 4, *post*, p. 4586, provides for mines.

(h) Does this word waste apply to the following word matter? Apparently not.

(i) See in s. 20, *post*, p. 4597, the limitation to be put upon the words "solid matter." A putrid effluent of 97.6 per cent. water and only 2.4 per cent. solids is not "putrid solid matter" (*River Ribble Joint Committee v. Halliwell*, [1899] 2 Q. B. 385; 63 J. P. 708; 44 Digest 41, 296, followed in *West Riding of Yorkshire Rivers Board v. Rawson* (1903), 67 J. P. 407; 89 L. T. 363; 44 Digest 44, 310). See as to the construction of a section of a local Act prohibiting the throwing or emptying into any dock of any "ballast, rubbish, dust, ashes, shingle, stones, or other refuse or things or the doing of any other act to prejudice the works of the board," *Gray v. Heathcote* (1918), 82 J. P. 211; 41 Digest 970, 8614.

(k) Although this section creates this offence, the statute does not make the commission criminal so as to render the party subject to any penalty. It is provided merely that the county court may restrain the continuance of the offence, and make an order, and if such order be disobeyed the offender will be liable to a penalty.

Where a statute prohibits an act and provides no penalty, the person who commits the act is liable to be indicted for a common law misdemeanor, but the rule cannot be held to apply here, as the statute contains a remedy.

The acts mentioned in the section when committed in navigable rivers will generally be such nuisances as will subject the person committing them to prosecutions for nuisances, and such prosecutions may still be instituted though they afford but indifferent remedies, and are generally very costly.

(l) Reference must be made to s. 17, *post*, p. 4596, which prevents the Act from applying to the lawful exercise of any rights of impounding or diverting water.

Thus, in *Smith v. Barnham* (1876), 1 Ex. D. 419; 40 J. P. 710; 44 Digest 43, 306, a local Act having prohibited persons from wilfully throwing rubbish into a stream, the Court of Appeal were disposed to hold that where a person exercised a right claimed by many years' enjoyment to cast the refuse of a tannery into the stream, he was not to be considered to be wilfully casting rubbish therein within the operation of the clause. The point was not, however, distinctly decided.

(m) This would be lawful in prosecutions for nuisances. The principle that the acts of several persons may, together, constitute a nuisance which may be restrained by injunction, though the damage occasioned by the act of any one of such persons, taken by itself, would be inappreciable, was laid down in *Thorpe v. Brumfitt* (1873), 8 Ch. App. 650; 37 J. P. 742; 36 Digest 215, 576, and recognised in *Lambton v. Mellish*, [1894] 3 Ch. 163; 58 J. P. 835; 36 Digest 215, 579. So where several manufacturers had their works upon a stream and caused a nuisance to a riparian owner below them by discharging offensive matter into the stream, it was held no answer to an action for nuisance brought against one of them by such owner to say that the share the defendant contributed to the nuisance was infinitesimal (*Blair v. Deakin* (1887), 52 J. P. 327; 57 L. T. 522; 44 Digest 38, 271).

PART II.

LAW AS TO SEWAGE POLLUTIONS.

3. Every person (a) who causes to fall or flow or knowingly permits (b) Prohibition as to drainage into streams of sewers. to fall or flow or to be carried into any stream (c) any solid or liquid sewage matter (d), shall (subject as in this Act mentioned) (e) be deemed to have committed an offence against this Act (f).

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person (a) causing or knowingly permitting the sewage matter so to fall or

Section 3. flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case (g) that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream (h).

Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order.

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit (i).

A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream (k) along a drain (l) communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing (m).

(a) See the definition in s. 20, *post*, p. 4597. A sanitary authority may be brought within the operation of this section.

(b) See note (b) to s. 2, *ante*, p. 4582. And note that now by the Rivers Pollution Prevention Act, 1893, *post*, p. 4872, it is enacted that where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of s. 3 of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

Two local sanitary authorities appointed a joint drainage committee consisting of members from each board, and gave to such joint committee the exclusive control and management of the sewage and sewage works, and henceforward the disposal and treatment of the sewage of both districts were carried out under the control of the said committee. The sewage works continued to remain the property of the local board to which the said works belonged prior to the appointment of the said joint committee. Sewage or other offensive or injurious matter was allowed to flow from the said sewage works into an adjoining river, thereby polluting it. The conservancy board thereupon served a notice in writing upon the local board to which the sewage works belonged to discontinue the flow of sewage matter into the river. The local board having failed to comply with the terms of the notice, were summoned before the magistrates to compel them to discontinue the nuisance, or to render them liable to the penalty for not doing so:—*Held*, that the local board were not liable as they had ceased to have control over the sewers, and so could not have “caused” or “suffered” the outflow into the river (*Lea Conservancy Board v. Tottenham L. B.* (1891), 55 J. P. 343; 64 L. T. 198; 44 Digest 56, 399).

The plaintiffs, under s. 10 of this Act, *post*, p. 4592, applied to a county court for and obtained an order to restrain the defendants from causing the sewage to flow into a stream. On appeal against this order it appeared to the court that, upon the facts of the case, the plaintiffs were themselves in default in not having made any provision for dealing with the sewage in these sewers, as required by the P. H. A., 1875 (13 Halsbury’s Statutes 623):—*Held*, that the making of the order was discretionary, and although the defendants had offended against this Act, as a matter of discretion, under the circumstances of the case, an order ought not to be made against them at the instance of the plaintiffs, who were themselves offenders against this Act, and were seeking to avoid performance of their duty under the P. H. A., 1875:—*Held*, also, that an appeal on the above-mentioned ground was correctly brought by way of motion (*Kirkheaton District L. B. v. Ainley, Sons & Co.*, [1892] 2 Q. B. 274; 57 J. P. 36; 44 Digest 55, 395).

The conservators of the river T. having indicted the local board of S., as the urban sanitary authority, for having in contravention of s. 63 of the Thames Navigation Act, 1866, “caused, or, without lawful excuse, suffered,” sewage matter to flow into the river T. within their district, in connection with which certain points of law were necessarily involved, it was held that the proper course to follow was to take a special verdict, pre-

**Note to
Section 3.**

pared by both sides, from the jury, after formal evidence of the matters alleged in the special verdict had been given, and that the points of law arising thereon should be subsequently discussed in the Court for Crown Cases Reserved (*R. v. Staines L. B.* (1888), 52 J. P. 215).

A local board under the P. H. A., 1875, have only a qualified property in the sewers within their district, and cannot prevent persons who had acquired a prescriptive right to use them from so doing, unless they provide other sewers equally effectual. Where a local board have not themselves constructed sewers which are a nuisance, but have only permitted them to be used by inhabitants who have acquired a prescriptive right to use them, the local board do not "cause or suffer" sewage to flow into the Thames within the meaning of s. 64 of the Thames Navigation Act, 1866, and cannot be convicted of a misdemeanor under that Act (*R. v. Staines L. B.* (1888), 53 J. P. 358; 60 L. T. 261; 44 Digest 44, 315). The predecessors of a local sanitary authority had made an agreement with the owner of a margarine factory that he should be entitled, subject to certain conditions, to discharge the effluent from the factory into their sewers. Owing to a breach of this agreement, the soil of a sewage farm, the property of the local authority, became clogged, and consequently offensive matter found its way into the river Brent. It was held that the local authority "caused or suffered to flow or pass" sewage or other injurious matter into the river within the meaning of s. 13 of the Middlesex County Council Act, 1898 (*Souhall and Norwood U. D. C. v. Middlesex C. C.* (1901), 65 J. P. 215; 83 L. T. 742; 44 Digest 43, 309). And see *Brown v. Dunstable Corporation*, [1899] 2 Ch. 378; 63 J. P. 519; 38 Digest 54, 311. The case of *R. v. Staines L. B.* (1888), *supra*, was followed in two subsequent cases. In *Thames Conservators v. Gravesend Corporation*, [1910] 1 K. B. 442; 73 J. P. 381; 44 Digest 44, 316, sewage passed from the premises of private persons and from premises belonging to the corporation into a sewer which was vested in the corporation, and thence flowed into the river Thames. It was held that as regards the sewage which came from their own premises, the corporation has "caused or suffered" the sewage to flow into the river within the meaning of s. 94 of the Thames Conservancy Act, 1894, but as regards the sewage coming from the premises of private persons, they had not done so. In *Walham Holy Cross U. D. C. v. Lea Conservancy Board* (1910), 74 J. P. 253; 103 L. T. 192; 44 Digest 47, 329, it was held that where a person has acquired the right to send sewage into the sewers of a local authority, and that sewage passes into a river, the local authority cannot be convicted of causing or suffering the sewage to pass into the river. See, however, *Rochford R. C. v. Port of London Authority*, [1914] 2 K. B. 916; 78 J. P. 329; 44 Digest 45, 318, where the above cases are distinguished if not overruled as being inconsistent with the decisions of the C. A. in *Kirkheaton District L. B. v. Ainley*, [1892] 2 Q. B. 274; 57 J. P. 36; 13 Digest 527, 786, and *West Riding of Yorkshire Council v. Holmfirth U. S. A.*, p. 4586, *post*. See as to the meaning of the word "caused" used in the Salmon Fishery Act, 1861, *Moses v. Midland Rail. Co.* (1915), 79 J. P. 367; 25 Digest 48, 437.

(c) See the definition in s. 20, *post*, p. 4597, where it will be seen how far sewers draining into the sea or tidal waters are affected by those enactments.

(d) There is no definition of "sewage matter" in this Act nor in the P. H. A., 1875, nor elsewhere. It appears to be properly the matter which is contained in a sewer. In *Sutton v. Norwich Corporation* (1858), 22 J. P. 353; 27 L. J. Ch. 739; 41 Digest 3, 1, KINDERSLEY, V.-C., observed that "in the common sense of the term a sewer means a large and generally underground passage for fluid and feculent matter from a house or houses to some other locality." Hence sewage matter appears to be feculent matter, and this is supported by s. 17 of the P. H. A., 1875 (13 Halsbury's Statutes 633), which used the words "sewage or filthy water," and the P. H. A., 1936, s. 30, *ante*, p. 87, which uses the words "foul water." See also *Durrant v. Branksome U. D. C.*, *ante*, p. 87.

It will be observed that it is not necessary to prove that any injurious effect has followed from the act referred to.

The occupier of any premises will be answerable for the acts of his household if he knowingly permits the sewage to fall into the stream, and this knowledge will be readily presumed from the state of the premises.

(e) The saving in s. 17, *post*, p. 4596, can have no operation upon the section. Hence no prescriptive right or licence under grant will be available against this statutory prohibition (*Lanark C. C. v. Airdrie Magistrates*; *Lanark C. C. v. Coatbridge Magistrates* (1906), 8 F. (Ct. of Sess.) 802, in H. of L., [1910] A. C. 286; 44 Digest 42, 299; *Midlothian C. C. v. Oakbank Oil Co.* (1904), 6 F. (Ct. of Sess.) 387; *George Legge & Son, Ltd. v. Wenlock Corporation*, [1938] A. C. 204; [1938] 1 All E. R. 37; 102 J. P. 93; Digest Supp.). The words "subject as in the Act mentioned" in this section and in s. 4, *post*, p. 4586, refer to the latter part of each section and do not qualify the first part of the section by introducing into it the provisions of the Act relating to legal proceedings and make the offence incomplete unless and until an order has been made against the offender to abstain from the commission of the offence (*Hulley v. Silversprings Bleaching Co.*, [1922] 2 Ch. 268

**Note to
Section 3.**

86 J. P. 30; 44 Digest 42, 302; see also *Neaverson v. Peterborough R. D. Co.*, [1902] 1 Ch. 557; 66 J. P. 404; 19 Digest 63, 360.

At common law a person cannot gain a prescriptive right to pollute the water of a river to such an extent and under such circumstances as to create a public nuisance (*R. v. Cross* (1812), 3 Camp. 224). But apart from this Act a riparian owner may, under s. 2 of the Prescription Act, 1832 (5 Halsbury's Statutes 824), obtain, as against other riparian owners, a right to discharge polluting matter into a river (*Wright v. Williams* (1836), 1 M. & W. 77; 1 Gale 410; 19 Digest 73, 430; *Carlyon v. Lovering* (1857), 1 H. & N. 784; 26 L. J. Ex. 251; 44 Digest 39, 280). The burden, however, cannot be increased (*Crossley v. Lightowler* (1867), 2 Ch. App. 478; 44 Digest 56, 401; *Hulley v. Silversprings Bleaching Co., Ltd.*, [1922] 2 Ch. 268; 86 J. P. 30; 44 Digest 42, 302), and if an increase cannot be separated from the legal user, there may be a total prohibition (*Blackburne v. Somers* (1879), 5 L. R. Ir. 1; 44 Digest 40, 289 i; *Frechette v. Compagnie Manufacturière de St. Hyacinthe* (1883), 9 App. Cas. 170; 44 Digest 13, 49). But a mere variation in the process of manufacture which alters the constituents of washings discharged without increasing the burden does not give a cause of action (*Bazendale v. McMurray* (1867), 2 Ch. App. 790; 31 J. P. 821; 19 Digest 158, 1087), although the substitution of a totally different class of business might do so (*Clarke v. Somersetshire Drainage Commissioners* (1888), 57 L. J. M. C. 96; 59 L. T. 670; 44 Digest 43, 305).

(f) Here also no penalty is imposed, but the application must be made to the county court to prevent the continuance of the offence. It must be noticed, however, that the person who thus acts may be liable to prosecution under the P. H. A., 1936, s. 92, *ante*, p. 293, and thereby rendered liable to a fine.

(g) He cannot have the benefit of this provision until he is taken before the court, but he will be entitled to notice of the intended proceedings under s. 13, *post*, p. 4595.

(h) The county court judge must consider whether this is the fact or not, and it is not sufficient to hold merely that nothing has been done to aggravate the nuisance (*West Riding of Yorkshire Council v. Holmfirth U. S. A.*, [1894] 2 Q. B. 842; 59 J. P. 213; 44 Digest 46, 327). A certificate from the inspector, under s. 12, *post*, p. 4594, will prove this fact. In an appeal under this Act, the case stated that a sanitary authority was and had been, for a long period before the passing of the Act, sending a large quantity of sewage into a watercourse which joined a larger stream, the water in which above the junction was available for most primary purposes, and that the combined stream fell into the sea three miles below the junction. The effect of this flow of sewage was, that in the summer months the greater part of the contents of the combined stream was foully polluted. The case, while it contained the statement that the combined stream had been for more than forty years carrying more or less polluted matter into the sea, also stated that the pollution had been largely increased within the last twenty years:—*Held*, that although the tributary stream was, at the date of the Act, "mainly used as a sewer" (see s. 20, *post*, p. 4597), and was therefore exempted from the operation of the Act, the stream, into which it flowed was not so used, and that therefore the pollution of the latter must be prevented (*Portobello Magistrates v. Edinburgh Magistrates* (1882), 10 R. (Ct. of Sess.) 130).

(i) Many orders were made during the years succeeding the Act. The section is now, however, spent.

(k) See the definition of this term in s. 20, *post*, p. 4597.

(l) See the definition of a drain in the P. H. A., 1875, s. 4, *ante*, p. 4343.

(m) It is presumed that these words have a retrospective operation and apply to the sanction given tacitly or actually to communications made before the Act, as well as to cases where drains are made hereafter to communicate with sewers. The sanitary authority will be responsible for the sewer itself (*Ferrand v. Hallas Land and Building Co.*, *ante* p. 61). See also note (b), *ante*, p. 4584, and the Rivers Pollution Prevention Act, 1893, *post*, p. 4872, and *cf.* the case of *Leeds and District Worsted Dyers and Finishers Association v. West Riding of Yorkshire Rivers Board* (1906), 70 J. P. 480; 5 L. G. R. 72; 44 Digest 55, 396.

It will be remembered that the communication of the drain with the sewer has often been the result of compulsion authorised by the statutes.

PART III.

LAW AS TO MANUFACTURING AND MINING POLLUTIONS.

Prohibition as to drainage into streams from manufactories.

4. Every person (a) who causes to fall or flow or knowingly permits (b) to fall or flow or to be carried into any stream (c) any poisonous, noxious, or polluting (d) liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned (e)) be deemed to have committed an offence against this Act (f).

**Note to
Section 4.**

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Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed (g) in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows (h) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably (i) available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream.

(a) See the definition in s. 20, *post*, p. 4597, which includes bodies of persons as well as individuals.

(b) See note (b) to s. 2, *ante*, p. 4582. Proceedings can be taken against a local authority under this section for causing or permitting polluting liquid proceeding from a factory or manufacturing process to fall or flow or be carried into a stream (*West Riding of Yorkshire Rivers Board v. Linthwaite U. D. C.*, [1915] 2 K. B. 436; 79 J. P. 280; 44 Digest 43, 303).

(c) See the definition in s. 20, *post*, p. 4597. A stream does not become a sewer within the meaning of the P. H. A., 1875 (13 Halsbury's Statutes 623), by reason of the discharge of manufacturing effluent into it in contravention of this section (*West Riding of Yorkshire Rivers Board v. Gaunt* (1902), 67 J. P. 183; 1 L. G. R. 133; 41 Digest 9, 57). In proceedings taken under s. 3, *ante*, p. 4583, a county court judge found that the beck in question was a "stream" within the meaning of s. 20, *post*, p. 4587, but did not expressly find that it was not a "sewer." The Divisional Court held that the question was in fact raised before the judge and was in terms decided by him (*West Riding of Yorkshire Rivers Board v. Yorkshire Indigo Scarlet and Colour Dyers, Ltd.* (1902), 67 J. P. 80). The case of *West Riding of Yorkshire Rivers Board v. Gaunt*, *supra*, was considered in *West Riding of Yorkshire Rivers Board v. Preston* (1904), 69 J. P. 1; 92 L. T. 24; 41 Digest 8, 51, the facts of which were as follows:—The defendants sent polluting liquids from their factory into a channel. This channel was said to have originally carried down water from a well above the factory, but the defendants diverted this water supply above their factory, took it into their mill and discharged it in a polluted state into the channel close to their factory. The channel ran from the factory past certain cottages, then joining a stream, fell with the stream into a river. Fifty or sixty cottages emptied their sewage into the channel below the factory till 1892, when a sewerage scheme was put into operation for the district. Two cottages still discharged slop water into the channel, and two or three small watercourses fell into it below the factory. A county court judge held that the channel was a stream within the meaning of s. 20, and that the defendants had committed an offence under this section. The Divisional Court held that a stream within the meaning of the Act may be either a natural or an artificial one; and that the court was not prepared to differ from the conclusion of the county court judge that the channel was a stream, since (apart from the existing watercourses below) pure water would still flow along the course but for the acts of the defendants. It has since been held that the discharge of sewage into the channel of an intermittent stream may have the effect of converting it into a sewer although the natural flow of the pure water is not cut off, and that no rule to the contrary is established by *West Riding of Yorkshire Rivers Board v. Gaunt*, *supra*, or *West Riding of Yorkshire Rivers Board v. Preston*, *supra* (*Att.-Gen. v. Lewes Corporation*, [1911] 2 Ch. 495; 76 J. P. 1; 44 Digest 52, 367). A county council applied for an order under this Act to restrain the appellants "from causing to fall or flow or to be carried into" certain streams "any solid or liquid sewage matter." The appellants alleged that the streams in question were not streams within the meaning of the Act in respect that at the date of the passing of the Act they were mainly used as sewers. There was a definite finding of fact that the appellants discharged all their sewage into the streams in question. It was held that the streams were "streams" and not "watercourses mainly used as sewers" within the meaning of the Act. In the course of his judgment Lord HALSBURY said, "I wish to add that *Gaunt's Case*," *supra*, "appears to me to have been perfectly rightly decided" (*Airdrie Magistrates v. Lanark C. C.*, *Coalbridge Magistrates v. Lanark C. C.*, [1910] A. C. 286; 41 Digest 8, 52). See also *George Legge & Son, Ltd. v. Wenlock Corporation*, [1938] A. C. 204; [1938] 1 All E. R. 37; 102 J. P. 93; Digest Supp., where it was held impossible in law for the status of a natural stream to be changed to that of a sewer by the discharge into it of sewage after the coming into operation of this Act. The previous cases were distinguished on the ground that in them the discharge was not illegal.

**Note to
Section 4.**

(d) These three words must have separate meanings: "poisonous" implies destruction of life, human or animal; "noxious" is lower in degree, and signifies some injury, but not of necessity immediately dangerous to life; "polluting" will include both the other qualities and also what is foul and offensive to the senses, except innocuous discoloration, as to which see s. 20, *post*, p. 4597.

This section applies to a liquid only, as there is no reference here to the obstruction of the stream. See as to throwing cinders, etc., into streams, the P. H. A., 1936, s. 259 (2), *ante*, p. 521. See, also, as to the choking or silting up of watercourses, *ibid.*, s. 259 (1), *ante*, p. 520.

(e) See note (e) to s. 3, *ante*, p. 4585.

(f) See note (b) to s. 2, *ante*, p. 4582. Manufacturers caused polluting liquid to flow into a sewer which discharged into a stream. The sewer existed at the date of this Act, and was vested in and under the control of the local sanitary authority. The manufacturers used no means to render the polluting liquid harmless. It was held that, even assuming that there was a prescriptive right to discharge their polluting liquid into the sewer, the manufacturers had committed an offence under the section by discharging into a sewer through which the liquid found its way into the stream (*Butterworth v. West Riding of Yorkshire Rivers Board*, [1909] A. C. 45; 73 J. P. 89; 44 Digest 42, 301).

Proceedings cannot be commenced under this section until the consent of the Minister of Health has been obtained under s. 6, *post*, p. 4589, and due notice given under s. 13, *post*, p. 4595, and that consent must be obtained before the notice required under s. 13 can be given (*West Riding of Yorkshire Rivers Board v. Robinson*, [1907] 1 K. B. 431; 71 J. P. 137; 44 Digest 50, 357).

(g) This channel may be constructed at any time hereafter; but it must be carefully noticed that the new channel must be a substituted one. No exemption is given to any other new channel (*Midlothian C. C. v. Pumpherson Oil Co.* (1904), 6 F. (Ct. of Sess.) 387; 44 Digest 42, a).

(h) See note (g) to s. 3, *ante*, p. 4586.

(i) This word is not in s. 3. There is so much difficulty in dealing with these subjects that the manufacturer is not required to guarantee the absolute success of the means which he has adopted. He will be protected if he uses means which, in the judgment of skilled persons, may reasonably be expected to remove the mischief although they in fact do not do so. Cf. also note (e) to s. 10, *post*, p. 4593.

Prohibition as
to drainage
into streams
from mines.

5. Every person (a) who causes to fall or flow or knowingly permits (b) to fall or flow or to be carried into any stream (a) any solid matter (a) from any mine in such quantities as to prejudicially (c) interfere with its due flow, or any poisonous, noxious, or polluting (d) solid or liquid matter proceeding from any mine (e), other than water in the same condition as that in which it has been drained or raised from such mine (f), shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows (g) to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably (h) available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream (i).

(a) See the definition in s. 20, *post*, p. 4597.

(b) See note (b) to s. 2, *ante*, p. 4582, and note (b) to s. 4, *ante*, p. 4587.

(c) It is to be observed that this word does not occur in s. 2. What is its force here? Can the due flow of the stream be interfered with otherwise than prejudicially? In mining districts this may be the case. It may be of no importance that the course of the stream is slackened, or that the channel is widened or changed. Hence it will be necessary to prove some actual prejudice to individuals from the interference. See note (e) to s. 2, *ante*, p. 4582, as to the due flow. See, also, as to the choking or silting up of watercourses, the P. H. A., 1936, s. 259 (1), *ante*, p. 520.

(d) See note (d) to s. 4, *supra*, with reference to these words, and the limitation as to polluting in s. 20, *post*, p. 4597.

In s. 20 it is provided that solid matter shall not include particles of matter in suspension, but such matters would appear to fall under the term liquid matters, and, if so, they would be within the provision of this section. See *United Alkali Co., Ltd. v. Simpson*, [1894] 2 Q. B. 116; 58 J. P. 607; 44 Digest 122, 985.

(e) It must be noticed that s. 2, *ante*, p. 4582, applies to quarries. And the term mine applies to some underground work. This was the meaning given to the word in the decisions of the court upon the rating of mines.

(f) It will be immaterial how poisonous or polluted this water may be, so long as its original condition remains unchanged. If it come into contact with other substances in the mine which may affect its condition, the exemption will cease, and if in an altered state it flows into any stream with the knowledge and permission of the mine-owner an offence will be committed.

(g) See note (g) to s. 3, *ante*, p. 4586.

(h) See note (i) to s. 4, *ante*, p. 4588.

(i) Reference should be made to the saving in s. 17, *post*, p. 4596.

**Note to
Section 5.**

6. Unless and until Parliament otherwise provides (a) the following enactments shall take effect: Proceedings shall not be taken against any person under this Part of this Act (b) save by a sanitary authority (c), nor shall any such proceedings be taken without the consent of the Local Government Board (d): Provided always, that if the sanitary authority, on the application of any person interested (e) alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board (f), and if that Board on inquiry (g) is of opinion that the sanitary authority should (h) take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

Restriction on
proceedings
under this Part
of the Act.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality (i).

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry (k), unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably (l) practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry (m).

Any person (n) within such district as aforesaid (o), against whom proceedings are proposed to be taken under this Part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes (p). The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses (q), and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities (r) to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

(a) These words indicate that this provision is of a tentative character, because future legislation could, of course, prevent the continuance of this enactment, and the words have in themselves no definite legal operation.

(b) It must be noticed that this section is limited to the cases of manufacturing pollutions and mining obstructions and pollutions.

(c) See the definition in s. 20, *post*, p. 4597. A fishery board is by the Salmon and Freshwater Fisheries Act, 1923, s. 55 (1) (8 Halsbury's Statutes 812), granted the powers of a sanitary authority under this Act to institute proceedings or may aid any person or local authority in instituting proceedings. See also the powers of a fishery board under *ibid.*, s. 8 (*op cit.* 783).

**Note to
Section 6.**

(d) The Minister of Health has now superseded the L. G. B. If proceedings are dropped, this consent must be obtained every time fresh proceedings are taken, although in respect of a continuance of the same pollution (*Ex parte Mersey and Irwell Joint Committee* (1895), 59 J. P. N. 756).

(e) What will constitute an interest is a question of some nicety. A riparian owner or occupier will be interested, so also will an inhabitant who draws water from the polluted stream; and it seems that if the stream be polluted within the district, the complainant need not be an inhabitant, or a ratepayer within it. But is an inhabitant of the district, as such, a person interested? Seeing the effect of polluted streams upon the general health of a district, it will probably be held that he is.

If the object of the complainant is to obtain only a settlement of a disputed private right, the Minister of Health will doubtless refuse to interfere.

(f) Now the Minister of Health. This application should be made on folio foolscap paper, addressed to the Minister under cover addressed to the Secretary. It should set forth the circumstances of the case, the applicant's interest, his complaint to the sanitary authority, and their refusal. It should also communicate reasonable means of proving the alleged offence.

(g) The P. H. A., 1975, Part IX., *ante*, p. 4504, provides for inquiries by the Minister of Health.

(h) This implies that an offence has been committed, and that there is sufficient means of proving it. The sanitary authority are compellable to commence proceedings, but if they should refuse to do so, alleging and showing that they have not adequate means of prosecuting them with success, the High Court of Justice would probably refuse to enforce this direction.

The following part of this section shows that, notwithstanding the direction of the Minister, the sanitary authority may, under certain circumstances, abstain from taking proceedings.

The consent of the Minister must, however, be obtained before the notice that proceedings will be taken has been given to the party against whom they will be taken, in order to give him the opportunity of being heard against the proceedings being taken (*West Riding of Yorkshire Rivers Board v. Robinson Brothers*, [1907] 1 K. B. 431; 71 J. P. 137; 44 Digest 50, 357, overruling *West Riding of Yorkshire Rivers Board v. Scarr End Mill Co.* (1901), 65 J. P. 776; 44 Digest 50, 356, and following *Midlothian C. C. v. Oakbank Oil Co., Ltd.* (1903), 67 J. P. 412; 5 F. (Ct. of Sess.) 700).

(i) This is only a guide to the Minister, pointing out how he is to exercise his discretion, but the direction is very vague. See also note (k), *infra*.

(k) These words also are vague. What is the definition of a "manufacturing industry"? Though only manufacturing industry is mentioned, doubtless mining industry falls within the meaning of this part of the section. Would one very large works or mine constitute a "seat"? It might be reasonable to hold that it did. A further defect in the section is that it contemplates that proceedings will always be proposed by the sanitary authority of the district where the pollution takes place, whereas the injury may conceivably be to a district into which the river flows. The special protection intended to be given to a seat of industry may amount to very little in practice, for in any case the department is required to have regard to the industrial interests involved and to the circumstances of the locality.

(l) It will be noticed that this adverb is placed before "practicable," and, therefore, governs both adjectives, but probably the effect will be the same as in the last section, upon which see note (i) to s. 4, *ante*, p. 4588.

(m) This consideration may be expected to cause embarrassment to the Minister, as the materiality of the injury will be difficult to measure. It seems to be intended that if material injury would be inflicted by the proceedings they are not to be allowed under any circumstances. See also note (k), *supra*.

(n) See the definition in s. 20, *post*, p. 4597.

(o) This district must be one which is the seat of a manufacturing industry.

(p) See note (k), *supra*.

(q) No power is given to the sanitary authority to examine these witnesses on oath; but see the Evidence Act, 1851, s. 16 (8 Halsbury's Statutes 214), which may possibly confer the power of administering oaths to witnesses upon an inquiry such as this.

(r) This prohibition does not apply to persons aggrieved, because they cannot take proceedings under this Part of the Act. See, however, s. 13, *post*, p. 4595.

PART IV.

Section 7.

ADMINISTRATION OF LAW.

7. [Repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. V., ante, pp. 720, 730.]

8. Every sanitary authority (a) shall, subject to the restrictions in this Act contained (b), have power to enforce the provisions of this Act in relation to any stream (a) being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority (c).

Power of
sanitary authority to enforce
Act.

. . . (d).

Proceedings may also, subject to the restrictions in this Act contained (e), be instituted in respect of any offence against this Act by any person aggrieved (f) by the commission of such offence.

(a) See the definition in s. 20, *post*, p. 4597, and the restriction as to the authority in the next section.

(b) See s. 13, *post*, p. 4595. See the L. G. A., 1888, s. 14, *post*, p. 4736, under which the county councils and joint committees constituted by Provisional Order under that section have also power to enforce the provisions of this Act. And see also Rivers Pollution Prevention (Border Councils) Act, 1898, s. 1, *post*, p. 4947, as regards Border councils, and Salmon and Freshwater Fisheries Act, 1923, s. 55 (1) (8 Halsbury's Statutes 812), as to fishery boards.

(c) There may be an obstruction or pollution out of the district which will produce mischief within the district, and there may be the same within the district which may produce mischief without the district. In both of these cases the sanitary authority of the district in which the mischief is produced, subject to the proviso in s. 6, *ante*, p. 4589, which prevents contemporaneous action by separate authorities, may take proceedings.

(d) Certain words here, dealing with expenses, were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1282.

(e) See s. 6, *ante*, p. 4589, which restricts proceedings with reference to offences under Part III. to sanitary authorities, and see the other restrictions contained in s. 13, *post*, p. 4595. It does not appear that the consent of the M. of H. is required to the proceedings to be taken by any person aggrieved.

(f) Who will be a person aggrieved? In s. 6, *ante*, p. 4589, there is a provision for a person interested. Persons living near a steam-engine, and affected by the smoke, were held to be persons aggrieved within the meaning of *Certiorari*, 1694, s. 3 (*R. v. Dewsnap* (1812), 16 East, 194; 36 Digest 242, 805); so also a person annoyed by offensive smells, and vapours (*R. v. Williams* (1844), 6 Q. B. 273; 15 L. J. Q. B. 98 n).

It seems that these proceedings may be taken in addition to those taken by the sanitary authority because the person aggrieved may require some special provision for his benefit. At the same time such person is not prevented from resorting to the remedies which the law otherwise provides. See s. 16, *post*, p. 4595.

9. The Conservancy Board constituted under the Lee Conservancy Act, 1868, shall within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act.

Power of Lee
Conservancy
Board to enforce
Act.
31 & 32 Vict.
c. div.

The said Conservancy Board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

Section 10.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1) *Legal Proceedings:*

Offences to be
restrained by
summary order
of county court.

10. The county court having jurisdiction in the place (a) where any offence against this Act is committed may by summary order (b) require any person to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act (c) may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may if it think fit, remit to skilled parties (d) to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report (e).

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section (f) shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month (g) or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order; and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court (h).

(a) It may become necessary in some cases to determine this place where there are separate jurisdictions. Thus, the act of putting something in the stream may cause the obstruction in a different district, and in a different jurisdiction. All the liquid cast into the stream may be innocuous until it reaches a spot in a different jurisdiction. It seems, however, that reference must be made to the place where the act was done. See, upon this point, *R. v. Cotton* (1858), 1 E. & E. 203; 23 J. P. 532; 36 Digest 235, 739; *Brown v. Bussell, Francomb v. Freeman* (1868), L. R. 3 Q. B. 251; 32 J. P. 196; 36 Digest 229, 699.

(b) Although these words point to an injunction only, it appears from the rest of the clause that the order may be something more. The order is in the nature of an injunction, and is in the discretion of the court (*Kirkheaton District L. B. v. Ainley & Co.*, ante, p. 4585). And see *Butterworth v. West Riding of Yorkshire Rivers Board*, ante, p. 4588. The order is equivalent to a judgment for the purposes of estoppel, and the defendants against whom it is made cannot in further proceedings for the enforcement of the order dispute the commission of the offence, or contend that the order, so far as it applies to the *locus in quo*, was made without jurisdiction (*River Ribble Joint Committee v. Croston U. D. C.*, [1897] 1 Q. B. 251; 30 Digest 121, 3).

The county court is not justified in the exercise of its judicial discretion under this section in refusing to make an order restraining the discharge of sewage into a stream in contravention of s. 3, ante, p. 4583, where the discharge would appreciably pollute the stream were it otherwise pure, merely because the pollution of the stream from other sources prevents the pollution due to the particular discharge from being appreciable (*Staffordshire C. C. v. Seisdon R. D. C.* (1907), 71 J. P. 185; 96 L. T. 328; 44 Digest 42, 300. See also *Hainesworth v. West Riding of Yorkshire Rivers Board* (1902), 5 L. G. R. 356 n).

A summary order was made in the county court under this section requiring the offender to abstain from the commission of an offence against this Act. On an application for penalties for making default in complying with a requirement of the order, it was held that two months' written notice, under s. 13, post, p. 4595, of the intention

to take proceedings need not be given to the offender (*West Riding of Yorkshire Rivers Board v. Heckmondwike U. D. C.* (1914), 78 J. P. 190; 44 Digest 50, 353).

As to costs, see County Court Rules, Order LIII., rr. 8, 45; and *Bates v. Gordon Hotels, Ltd.*, [1913] 1 K. B. 631; 13 Digest 523, 732.

(c) No part of this Act assigns any duty to be performed. But the provision of the section contemplates that the judge of the county court will not always absolutely prohibit the act complained of, but may, in some cases, make an order prescribing that the works may be carried on in such manner as will prevent the recurrence of the evil. He may give a limited time during which the defendant may provide for the removal of his works, or adopt such means as will, according to the judgment of the court, remove the nuisance.

(d) *I.e.*, to special referees, such as chemists, engineers, or other scientific persons. This remission is optional with the court, and as the section makes no provision for the costs of this report, which will be usually for the benefit of the defendant, the court, before the matter is remitted, may probably require the defendant to undertake to pay those expenses.

(e) The precise meaning of these words is, perhaps, not altogether obvious, but it appears to be intended that the referees shall report that the expenses will be such that the defendant might reasonably be called upon to incur them, or that they would be such that it would be unreasonable that he should be required to undertake them. Indeed, the expenses might in some cases render it impossible for the manufacturer to continue his business.

It must be noticed that the word "reasonably" introduced in s. 4, *ante*, p. 4587, before "available," and in s. 5, *ante*, p. 4588, before "practicable," is omitted here, but doubtless the referees will be guided by a consideration of what is reasonable in regard to the works.

(f) This will occur where the judge of the county court either makes an order directing an absolute abstinence from the continuance of the offence, or makes an order specifying certain works to be executed.

This part of this section sets out the means of prohibiting the offences which have been described in the former Parts of the Act. The penalty is incurred when an order of the court is disobeyed.

(g) This means calendar month. See the Interpretation Act, 1889, s. 3 (18 Halsbury's Statutes 993).

(h) This amount will in many cases far exceed the amount imposed as the limit of the jurisdiction of the county court; nevertheless the action may be brought therein. See *B. v. Harden* (1853), 2 E. & B. 188; 17 J. P. 614; 36 Digest 239, 781; *Hertford Union Guardians v. Kimpton* (1855), 11 Exch. 295; 19 J. P. 678; 36 Digest 240, 783.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits (a), or in respect of the admission or rejection of any evidence, he may appeal from that decision to the [Court of Appeal (b)].

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys (c), and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.

The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments rules and orders relating to proceedings in actions in county courts (d), and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint (e) entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court (f), if it appears to such judge desirable in the interests of justice (g) that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

**Note to
Section 10.**

Appeal from
county court,
and removal of
case into High
Court.

**Note to
Section 11.**

(a) These words appear to apply to the facts of the case as shown by the evidence, and probably also to the requirement made by the judge of the county court. It may be contended before the High Court that the facts proved did not justify the finding of the judge, or if he shall have made an order requiring anything to be done, that such order would not be reasonable or practicable.

Again, the complaining party may urge that their complaint has been improperly dismissed.

(b) The words in square brackets were substituted by the Administration of Justice (Appeals) Act, 1934, s. 2 (1), Schedule, Pt. I. (27 Halsbury's Statutes 459, 460). See also County Courts Act, 1934, ss. 105, 108 (1) (*op. cit.* 141, 142).

(c) This alternative appears to be given, because in the county court the parties may appear in person, and the provision is copied from Coinage (Sydney Branch Mint) Act, 1863, s. 14, but it is not likely that the parties will often appear in these proceedings in person. Indeed, the sanitary authorities cannot do so.

(d) A proceeding under s. 10, *ante*, p. 4592, for a summary order is civil, not criminal, and therefore discovery and interrogatories may be allowed (*Derby Corporation v. Derbyshire C. C.*, [1897] A. C. 550; 62 J. P. 4; 44 Digest 50, 359).

(e) This word explains how the proceedings are to be taken in the county court.

(f) Apparently one of the parties only make the application to the judge, though the other party must be summoned to appear at the hearing.

(g) These are rather indefinite words. They seem to imply that by reason of prejudice or undue interest in the court, either on the part of the judge or the jury, the case cannot be fairly tried in the county court. But it is presumed that the judge would also be moved by the gravity of the question at issue, or its difficulty.

The section does not proceed to declare what can be done by the High Court, but doubtless it will be the same as can be done by the county court.

In *West Riding of Yorkshire Rivers Board v. Ravensthorpe U. D. C.* (1907), 71 J. P. 209; 44 Digest 51, 361, an application for transfer was refused on the ground of expense and because a local investigation would be precluded by acceding to it.

Certificate of
inspector of
[Minister of
Health] as to
best practicable
means.

12. A certificate granted by an inspector of proper qualifications (a) appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact (b); such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period (c).

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal (d) to the Local Government Board against the decision of the inspector; and the Board (e) may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just.

(a) The Minister of Health has now superseded the L. G. B. The inspector must be specially appointed by him; few such certificates have been granted.

This certificate would be available under ss. 3—5, *ante*, pp. 4583—9.

(b) It must be carefully noted that the certificate will only have this effect in proceedings under this Act, though it is to be available to some extent in other proceedings. See s. 16, *post*, p. 4595.

(c) It does not appear that it can be revoked or recalled before the expiration of the period.

(d) The Minister of Health has now superseded the L. G. B. This appeal should be made in writing upon folio foolscap paper addressed to the Minister or Secretary of the Ministry. No special form has been prescribed.

If the local authority appeal, the same may be made under their common seal or under the hand of their clerk.

No time is prescribed for the appeal, but it should be made promptly after the decision.

(e) No precise rule of action is prescribed, and the Minister will follow his usual practice

of receiving the appeal in writing, communicating it to the other party, and having received an answer, and also communicated with the inspector, will give his decision. There is no need of an order for this decision, though there must be one for the costs if awarded. It is presumed that the costs here referred to are those of the parties. As to the recovery of such costs, see s. 14, *infra*.

Note to
Section 12.

13. *Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act (a); nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice (b) of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending (c).*

Restriction on
proceedings for
offences.

(a) This paragraph being temporary in its application was repealed by the S. L. R. A., 1883 (18 Halsbury's Statutes 986).

(b) In the case of proceedings under Part III. of this Act this notice cannot be given until the consent of the M. of H. under s. 6, *ante*, p. 4589, has first been obtained. See *West Riding of Yorkshire Rivers Board v. Robinson*, *ante*, p. 4590. Care must be taken to secure the proper service of this notice, as the statute does not supply any statement of what shall be sufficient service. In general the notice should be signed by the clerk of the sanitary authority proposing to proceed where such authority proceeds. In the case of a proceeding by a person aggrieved the notice will be sufficient if given by his solicitor or agent.

(c) See *West Riding of Yorkshire Rivers Board v. Heckmondwike U. D. C.* (1914), 78 J. P. 190; 44 Digest 50, 358. This prohibition is in addition to that in s. 6, *ante*, p. 4589, which refers to proceedings under this Act, and the object of this enactment is to prevent the party from being oppressed by a variety of proceedings. But *quære*, what proceedings are referred to?

14. . . Every order for the payment of costs made by the said Board under section twelve of this Act may be made a rule of her Majesty's High Court of Justice.

Orders as to
costs of
inquiries.

The Minister of Health has now superseded the L. G. B. See the P. H. A., 1875, s. 294, *ante*, p. 4505. Certain words in this section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1282.

This and the following section are applied by s. 55 (5) of the Salmon and Freshwater Fisheries Act, 1923 (8 Halsbury's Statutes 813), to local inquiries held by persons appointed by the Ministers of Health and of Agriculture and Fisheries with regard to the application of this Act and the amending Acts to tidal waters and the sea for the protection of fisheries.

15. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1282.]

(2) Saving Clauses.

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed (a); and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act (b).

Powers of Act
cumulative.

(a) Hence persons specially aggrieved by any acts which would of themselves constitute the offences herein described may pursue the remedies which the law provides for them as by injunction or indictment. In many cases also such offences are the subject of specific provisions in local Acts. The Waterworks Clauses Act, 1847, ss. 61—67, *ante*,

**Note to
Section 16.**

pp. 4193—4195, relating to waterworks, incorporated with the P. H. A., 1936, by s. 120 *ante*, p. 368, also contains provisions prohibitory of some of them, and the customs of certain ancient courts and of the Commissioners of Sewers also apply to them. All these provisions are preserved. See also the provisions of the P. H. A., 1875, s. 69, *ante*, p. 4349, which enables local authorities to take proceedings to prevent the pollution of streams, and P. H. A., 1936, s. 100, *ante*, p. 320, which enables them to bring actions in respect of nuisances.

Whether the pursuit of these remedies will prevent the adoption of the remedies given by this Act will depend upon the construction of the last proviso in s. 13, *ante*, p. 4595.

This section only saves rights to prevent pollution and not rights to pollute as against other riparian owners (*Midlothian C. C. v. Oakbank Oil Co.* (1904), 6 F. 387).

(b) See s. 12, *ante*, p. 4594. Although this certificate is to be thus considered, the court are not bound to give any particular weight to it. Probably without this enactment it could have been brought under the notice of the court by affidavit or otherwise. However, it cannot now be rejected as irrelevant.

Saving of rights
of impounding
and diverting
water.

17. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.

This is an important section, and prevents the operation of the prohibitory clauses of the Act to the extent which the generality of the language would have effected. If the general terms of those sections were considered it might have been found that rights relating to water would be improperly and unnecessarily interfered with.

Thus, a miller or other person may throw rubbish or waste into a stream to divert the course where he has a right to such diversion, or where he desires to impound the water, and if the act be done with any such object this section appears to exempt him from the provisions of the Act. The right to impound implies the right to return the water after impounding, although it may have become putrid by the impounding (*River Ribble Joint Committee v. Halliwell*, [1899] 2 Q. B. 385; 63 J. P. 708; 44 Digest 41, 296).

It is, however, to be carefully noticed that it is only where there is the right described that this exception takes effect; and further, that no excessive deposit nor any negligence or unnecessary action in this respect will be excused.

Saving of
certain Con-
servancy Acts.

18. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by the Thames Conservancy Acts, 1857 and 1864, or by the Thames Navigation Act, 1866 (a), or by the Lee Conservancy Act, 1868 (b), or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis) executed under the Metropolis Management Act, 1855 (c), and the Acts amending or extending the same, or take away abridge or prejudicially affect any right power authority jurisdiction or privilege of the Metropolitan Board of Works.

(a) The Thames Conservancy Acts, 1857 and 1864; and the Thames Navigation Act 1866, were wholly repealed and replaced by the Thames Conservancy Act, 1894, which has in its turn been repealed and replaced by the Thames Conservancy Act, 1932 (22 & 23 Geo. 5, c. xxxvii). The Port of London Authority are the Conservators of the river Thames within the limits of the Port as defined by the Port of London (Consolidation) Act, 1920, Sched. I. (18 Halsbury's Statutes 745), as amended by the Port of London (Various Powers) Act, 1932, s. 22 (25 Halsbury's Statutes 791), viz. roughly from the boundary between Teddington and Twickenham down to Havengore Creek, Essex, and the Isle of Sheppey, Kent, but excluding the Medway, Swale, Lee or Lee Bow Creek so far as under the jurisdiction of conservators, and excluding the Grand Junction Canal, and claim the benefit of all savings on behalf of the Thames Conservators.

(b) See now also 37 & 38 Vict. c. xcvi., 49 & 50 Vict. c. cix., 55 & 56 Vict. c. cli., and Lee Conservancy Act, 1900.

(c) (11 Halsbury's Statutes 889). The powers and duties of the Metropolitan Board of Works were transferred to the London C. C. by Local Government Act, 1888, s. 40 (10 Halsbury's Statutes 718).

Saving of works
of certain local
authorities.

19. Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority,

in pursuance of such enactment, shall be deemed to be an offence against **Section 19.**
this Act.

It is presumed that the Act referred to has made due provision for the prevention of the pollutions herein dealt with; but, independently of this section, this Act would not have applied to these, unless the L. G. B. or their successor the Minister of Health acted under the next section, or under s. 55 of the Salmon and Freshwater Fisheries Act, 1923 (8 Halsbury's Statutes 812), which would hardly have occurred against a statutory licence. And see *Somersetshire Drainage Commissioners v. Bridgwater Corporation* (1899), 81 L. T. 729; 44 Digest 43, 308.

(3) Definitions.

20. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say, Definitions.

"Person" includes (a) any body of persons, whether corporate or unincorporate (b):

"Stream" includes (c) the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds (d), be determined by the Local Government Board, by order published in the London Gazette. Save as aforesaid, it includes rivers streams canals lakes and watercourses, other than watercourses at the passing of this Act mainly used as sewers (e), and emptying directly into the sea or tidal waters which have not been (f) determined to be streams within the meaning of this Act by such order as aforesaid:

"Solid matter" shall not include particles of matter in suspension in water (g):

"Polluting" shall not include innocuous discoloration:

"Sanitary authority" means—

In the metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the Acts amending the same (h):
Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875 (i).

13 & 19 Vict.
c. 120.
18 & 19 Vict.
c. 121.

38 & 39 Vict.
c. 55.

* * * * *

(a) This word has an extending meaning, and does not exclude the other significations of the term defined (*R. v. Kershaw* (1856), 6 E. & B. 1007; *Doe v. Benham* (1845), 7 Q. B. 979).

(b) Hence partnerships and associations are included.

(c) This is not so much a definition as an enactment that the Minister of Health shall determine how much of the sea and of tidal waters shall be brought within the operation of this Act. See also next note.

Tidal waters appear to signify those parts of rivers in which the tide ebbs and flows, as estuaries are covered by the term sea. It would seem that the expression tidal waters is not confined to those waters where there is a horizontal ebb and flow only, but may include waters in which there is only a vertical rise (*West Riding of Yorkshire Rivers Board v. Tadeaster R. D. C.* (1907), 71 J. P. 429; 97 L. T. 436; 44 Digest 86, 671). Cf. *Reece v. Miller* (1882), 8 Q. B. D. 626; 47 J. P. 37; 44 Digest 85, 669. As to depositing solid matter in harbours, etc., see *United Alkali Co., Ltd. v. Simpson*, ante, p. 4588.

As to the rights of riparian owners in tidal rivers, see *Lyon v. Fishmongers' Co.* (1876) 1 App. Cas. 662; 44 Digest 107, 356.

Water percolating through the ground in no defined or visible channel is not a stream (*McNab v. Robertson*, [1897] A. C. 129; 61 J. P. 468; 19 Digest 146, 1001).

(d) By these words it is probably intended that the Minister of Health is not to have any consideration of the Customs, Admiralty, or other regulations, except so far as they coincide with the sanitary necessities of the districts. The following are instances of orders made by the L. G. B. under the section dealing with tidal portions of rivers, viz.: in 1902, Willington Gut, Willington Burn, and Wallsend Burn; in 1897, parts of the rivers Avon and Stour (Hants); in 1890, part of the Medway. By s. 55 of the Salmon and Freshwater Fisheries Act, 1923 (8 Halsbury's Statutes 812), an order may be made extending the

**Note to
Section 20.**

operation of this Act and its amending Acts to the sea and tidal waters "for the purpose of the protection of fisheries." The procedure to be followed in making such an order is prescribed by the section and is referred to in the note to s. 1, *ante*, p. 4581.

It will be well to refer to the provisions respecting port health districts in the P. H. A., 1936, *ante*, p. 5.

(e) See *Portobello Magistrates v. Edinburgh Magistrates*, *ante*, p. 4586. As to when a stream may become a sewer, see *Falconar v. South Shields Corporation* (1895), 11 T. L. R. 223; *West Riding of Yorkshire Rivers Board v. Gaunt*, *ante*, p. 4587; *West Riding of Yorkshire Rivers Board v. Preston*, *ante*, p. 4587; *West Riding of Yorkshire Rivers Board v. Yorkshire Indigo, Scarlet and Colour Dyers, Ltd.*, *ante*, p. 4587; *Glasgow, Yoker and Clydebank Rail. Co. v. Macindoe* (1896), 24 R. (Ct. of Sess.) 160; *Airdrie Magistrates v. Lanark C. C.*, *Coatbridge Magistrates v. Lanark C. C.*, [1910] A. C. 286; 41 Digest 8, 52; *Att.-Gen. v. Lewes Corporation*, *ante*, p. 4587; *Shepherd v. Croft*, [1911] 1 Ch. 521; 41 Digest 8, 54; *George Legge & Son, Ltd. v. Wenlock Corpn.*, [1938] A. C. 204; [1938] 1 All E. R. 37; Digest Supp.

(f) Or rather "which shall not be."

(g) It is believed that these words have a technical meaning in chemistry. However, disintegrated matters which do not sink, but float in water, such as the fibres of the pulp of paper, appear to fall within this definition. But if they coagulate in water and cease to be particles, they will lose the exemption. And see *River Ribble Joint Committee v. Halliwell*, *ante*, p. 4583.

(h) These Acts are all repealed and re-enacted by the P. H. (London) A., 1936 (30 Halsbury's Statutes 437).

(i) See the L. G. A., 1933, s. 1, *ante*, p. 736. Parts V. and VI. of this Act, relating only to the application of the Act to Scotland and Ireland, are here omitted.

THE LIMITED OWNERS RESERVOIRS AND WATER SUPPLY FURTHER FACILITIES ACT, 1877.

(40 & 41 VICT. c. 31) (a).

An Act to give further facilities to Landowners of limited interests in England and Wales and Ireland to charge their estates with the expenses of constructing Reservoirs for the Storage of water, and other similar purposes.

[2nd August, 1877.]

Short title.

1. This Act may be cited as the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877.

(a) The preamble to this Act has been repealed by the S. L. R. A., 1894. See also s. 4 of that Act (18 Halsbury's Statutes 1020) as to the omission of the clause of enactment. The effect of this Act and its bearing upon the subject of public health have already been stated in the notes to s. 116 of the P. H. A., 1936, *ante*, p. 356. It has been thought advisable to set out here the full text of the Act. See also District Councils (Water Supply Facilities) Act, 1897, *post*, p. 4940.

Extent.

2. This Act shall not extend to Scotland (a).

(a) But see now Improvement of Land Act, 1899, s. 2.

Construction.
27 & 28 Vict.
c. 114.

3. This Act shall be incorporated with the Improvement of Land Act, 1864, and the two Acts shall be read together as one Act.

**Certain
provisions of
26 & 27 Vict.
c. 93, incorpo-
rated.**

27 & 28 Vict.
c. 114.

4. The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the undertakers (a) are incorporated with this Act; and in that Act, as incorporated with this Act, the expression "the special Act" shall mean and include the Improvement of Land Act, 1864, and this Act; and the expression "the undertakers" shall mean any person who constructs or erects any reservoir or dam under the authority of either of the last-mentioned Acts.

(a) See Waterworks Clauses Act, 1863, ss. 3—10, *ante*, pp. 4257, 4258.

5. The construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply of water to any sanitary or other local authority or water company, or to any manufacturer or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Land Act, 1864, and shall be sanctioned by the Commissioners (a), if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate, or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon (b); and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid.

In calculating whether the improvement is likely to effect a permanent increase of the yearly value of the land, or be productive of a yearly revenue to the landowner exceeding the yearly amount proposed to be charged thereon, it shall be lawful for the Commissioners (a) to take into account the value of any contract, the terms of which have been agreed upon between the landowner and any sanitary or other local authority, or water company, or manufacturer or other persons, for the purpose of supplying such authority company person or persons with water, as well as the effect on such value or revenue of any sum expended by the landowner in the construction of the works over and above the sum proposed to be charged upon the land.

When the improvement will afford a supply of water to persons residing or engaged in labour on the lands on which the proposed works will be situate, or on any other lands settled to the same uses, the Commissioners (a) may, if they think fit, sanction the improvement, although it may not be shown that the same will effect a direct yearly increase in the value of the lands, or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon (c).

(a) Now the Minister of Agriculture and Fisheries. See note (a) to s. 10, *post*, p. 4600.

(b) As to charging estates with the cost of improvements, see the Improvement of Land Acts, 1864 and 1899 (10 Halsbury's Statutes 127, 166). Reference may also be made here to s. 83 and Sched. III., Pt. I., xiv., of the Settled Land Act, 1925 (17 Halsbury's Statutes 920, 967), which enables the cost of waterworks to be paid for out of capital.

(c) Compare the District Councils (Water Supply Facilities) Act, 1897, s. 4, *post*, p. 4942.

6. Any landowner charging or proposing to charge (a) his estate with the cost of the construction of reservoirs or other works for the supply of water under this Act may enter into any agreement for the supply of water to any sanitary or other local authority, water company, manufacturer, or other person, for any term not exceeding the number of years during which the cost of the improvement, or any part of it, is made a charge upon the estate: Provided that every such agreement be approved by the Commissioners (b), and that no premium or benefit in the nature of a premium be reserved thereby by the landowner.

(a) See note (b) to s. 5, *supra*.

(b) See note (a) to s. 5, *supra*.

7. Any company now authorised to contract with landowners in England or Wales . . . (a) for the execution of any works for the improvement of

Section 5.

What to be deemed improvements within 27 & 28 Vict. c. 114.

27 & 28 Vict. c. 114.

Supply of water to local authority, etc.

Power to contract for

Section 7. land, or to make advances for the purpose of executing or assisting in the execution of such works, may, with the approval of the Commissioners (b), contract with any such landowner for the execution of any reservoirs or works of water supply, the cost of which may by this Act be charged upon the estates of such landowner, and may, with the like approval, make advances for the purpose of executing or assisting in the execution of such reservoirs or works; and for this purpose the execution of any such reservoirs or works shall be deemed to be an improvement of land within the meaning of any Act of Parliament or articles of association relating to any such company.

execution of
reservoir, etc.

(a) Words relating to Ireland only are here omitted.

(b) See note (a) to s. 10, *infra*.

Subscriptions
to waterworks.

27 & 28 Vict.
c. 114.

8. Any landowner desiring to charge (a) his estates with subscriptions for the construction of waterworks by a water company (b) may charge his estates with such moneys on the same terms and conditions as he may under the Improvement of Land Act, 1864, charge his estates with moneys subscribed for the construction of railways or navigable canals; and for this purpose the provisions contained in sections seventy-eight to eighty-nine, both inclusive, of the Improvement of Land Act, 1864, shall apply, *mutatis mutandis*, to such subscriptions, as if the same had been subscribed for the construction of a railway or navigable canal.

(a) See note (b) to s. 5, *ante*, p. 4599.

(b) As to charging the estate with contributions towards expenses incurred by any district council in supplying water, see the District Councils (Water Supply Facilities) Act, 1897, *post*, p. 4940.

Protection of
rights.

9. Nothing in this Act shall be construed to authorise any landowner, or any water company, local authority, person or persons authorised by any landowner, to injuriously affect any reservoir canal river stream or navigation, or the feeders thereof, or the supply quality or fall of water contained in any reservoir canal river stream or navigation, or in the feeders thereof, or any other water rights or easements in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream navigation feeders, or such supply quality or fall of water, or other water rights or easements, unless the landowner, water company, local authority, person, or persons first obtain the consent in writing of the body of persons or person so entitled as aforesaid (a).

(a) Compare the Improvement of Land Act, 1864, s. 46 (10 Halsbury's Statutes 141).

Definitions.

10. In this Act the following words and expressions shall have the following meanings; that is to say,

"The Commissioners" means the Inclosure Commissioners of England and Wales . . . (a):

"Works for the supply of water" includes wells, pumps, reservoirs, cisterns, ponds, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, machinery, and things for supplying or used in supplying water:

"Water company" means any person or body of persons, corporate or unincorporate supplying or who may hereafter supply water for his or their own profit:

"Local authority" means any authority having jurisdiction for any public local purpose:

The several words and expressions to which by the Improvement of Land Act, 1864, meanings are assigned, shall in this Act have the same respective meanings as in that Act.

(a) Words relating to Ireland only are here omitted. The Inclosure Commissioners became, under the Settled Land Act, 1882, s. 48, the Land Commissioners for England

and the powers and duties of the Land Commissioners for England under this Act were together with their other powers and duties transferred to the Board of Agriculture by the Board of Agriculture Act, 1889, s. 2 (3 Halsbury's Statutes 401), and now to the Minister of Agriculture and Fisheries. See Ministry of Agriculture and Fisheries Act, 1919 (*op. cit.* 451).

Note to
Section 10.

THE CANAL BOATS ACT, 1877.

(40 & 41 VICT. c. 60) (a).

An Act to provide for the Registration and Regulation of Canal Boats used as Dwellings. [14th August, 1877.]

* * * * *

12. Any company or association, corporate or unincorporate, being the owners of any canal boats, or being the owners lessees or undertakers of any canal, may, with the assent of a special resolution of their members, and notwithstanding any Act of Parliament, charter, or document regulating the funds of the company or association, appropriate any portion of their funds to the establishment and maintenance, or establishment or maintenance, of a school or schools wherein the children of the persons employed in canal boats may be lodged maintained and educated, or educated only; with this restriction, that the children shall not be maintained gratuitously, but the lodging or education may be wholly or partially gratuitous.

Power of canal company, etc. to establish schools.

A "special resolution" shall for the purposes of this Act mean a resolution passed in manner provided by the fifty-first section of the Companies Act, 1862 (a).

25 & 26 Vict. c. 89.

(a) See now s. 117 of the Companies Act, 1929 (2 Halsbury's Statutes 849).

* * * * *

16. This Act shall not extend to Scotland or Ireland.

Extent.

17. This Act may be cited as "The Canal Boats Act, 1877."

Short title.

THE PUBLIC WORKS LOANS ACT, 1878.

(41 & 42 VICT. c. 18) (a).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and by the Commissioners of Public Works in Ireland, and to authorise the former Commissioners to compound and cancel certain Loans and Interest, and to amend the Public Works Loans Act, 1875.

[27th May, 1878.]

1. This Act may be cited as "The Public Works Loans Act, 1878."

Short title.

(a) See the Public Works Loans Act, 1875, *ante*, p. 4544. The preamble to this Act and the recital to s. 4, *infra*, have been repealed by the S. L. R. A., 1894. See also s. 4 of that Act (18 Halsbury's Statutes 1020) as to the omission of the clause of enactment.

PART I.

PUBLIC WORKS LOAN COMMISSIONERS.

2. [Grant for loans during period ending 30th June, 1879] (a).

(a) This section was repealed by the S. L. R. A., 1883 (18 Halsbury's Statutes 986).

3. [Composition of debt due from the Epping Rural Sanitary Authority] (a).

(a) This section is omitted as not of general interest.

Section 4.

Examination
into proper
application of
loan advanced
on rates.

38 & 39 Vict.
c. 89, s. 36.

4. . . . Where upon any examination made in pursuance of section thirty-six of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other, and further, if it appears to them that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct a sum equal to the amount so misapplied to be raised within the time and out of the fund or rate named in the order and to be applied as directed by the above-mentioned order (a).

An order made by the Local Government Board in pursuance of this section may be enforced by writ of mandamus.

(a) The unapplied balance may now be applied to any purpose to which moneys borrowed on the security of the rate are properly applicable. See the Public Works Loans Act, 1881, s. 9, *post*, p. 4621. The L. G. B. has now been superseded by the Ministry of Health.

5. [*Cancellation of debt due in respect of Wigan church*] (a).

(a) Section 5 was repealed by the S. L. R. A., 1883.

Repeal of
obligation of
Public Works
Loan Commis-
sioners to take
securities under
38 & 39 Vict.
c. 83.
38 & 39 Vict.
c. 89.

6. So much of any Act as requires the Public Works Loan Commissioners to take in respect of any loan advanced by them under that Act in preference to any other securities, all or such one or more of the securities issuable under the Local Loans Act, 1875, as they may prefer, is hereby repealed, and the security for any such loan may be given and taken under and pursuant to the Public Works Loans Act, 1875 (a).

(a) Part II. related to Ireland only, and was repealed by the S. L. R. A., 1883.

* * * * *

THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

(41 & 42 VICT. c. 77).

An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes. [16th August 1878.]

The several statutes relating to highways are not included in this Work. This Act, however, contains the provisions as to "county roads" which are referred to in the L. G. A., 1888, s. 11, *post*, p. 4726, and the L. G. A., 1929, Pt. III.; Vol. V. and 10 Halsbury's Statutes 903. By s. 29 (1), *ibid.*, references in any Act to "main roads" are to have effect as if the words "county road" were substituted. Accordingly, throughout this Act, "county road" has been substituted for "main road." The expression "county road" now includes not only what were formerly "main roads" and roads which may be declared "county roads" under this Act or become "county roads" by reason of their construction under s. 10 (2) of the Development and Road Improvement Funds Act, 1909, *post*, p. 5105, but all roads transferred to the county council by the L. G. A., 1929, i.e. all roads in rural districts (s. 30, *ibid.*) and "classified roads" in urban districts (s. 31, *ibid.*). See also the Locomotives on Highways Act, 1896 (19 Halsbury's Statutes 64), and the Locomotives Act, 1898, *post*, p. 4944. The preamble to this Act is repealed by the S. L. R. A., 1894. See also s. 4 of that Act (18 Halsbury's Statutes 1020) as to the omission of the clause of enactment.

PRELIMINARY.

Section 1.

1. This Act may be cited as "The Highways and Locomotives (Amendment) Act, 1878."

Short title.

2. This Act shall not apply to Scotland or Ireland; and, save as is by this Act expressly provided, Part I. of this Act shall not apply . . . (a) to any part of the metropolis . . . (b).

Extent.

(a) Words excluding the Isle of Wight were here repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173), having been rendered unnecessary by the L. G. A., 1888, s. 12, *post*, p. 4734.

(b) The remainder of this section, which excluded highways in South Wales from its operation, was repealed by the S. L. R. A., 1898, having been rendered obsolete by the L. G. A., 1888, s. 13, *post*, p. 4735.

PART I.

AMENDMENT OF HIGHWAY LAW.

Highway Districts.

Sections 3—9 inclusive of this Act (9 Halsbury's Statutes 167—169), which dealt with the formation and expenses of highway districts, became inoperative by reason of the provisions of s. 25 of the L. G. A., 1894, *post*, p. 4905, by which the rural district councils were made the highway authorities in their districts. The functions of rural district councils as highway authorities are now by L. G. A., 1929, s. 30, Vol. V. and 10 Halsbury's Statutes 904, transferred to county councils. This transfer does not revive the operation of the sections referred to and they have accordingly been omitted in the text.

* * * * *

10. Where complaint is made to the county authority (a) that the highway authority of any highway area within their jurisdiction has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority (a), if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority in the matter of such complaint (b).

Power of county authority to enforce performance of duty by defaulting highway authority.

If such duty is not performed by the time limited in the order, and the highway authority fail to show to the county authority (a) sufficient cause why the order has not been complied with, the county authority may appoint some person to perform such duty, and shall by order direct that the expenditure of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court.

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority (a) may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority (a) for the repair of a highway on a highway authority alleged to be in default, if such authority, within ten days after service on them of the order of the county authority (a), give notice to the clerk of the peace that they decline to comply with the requisitions of such order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway (c).

Section 10. If the county authority (a) decide to submit the question to a jury they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway (d). Until the trial of the indictment is concluded the order of the county authority (a) shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority (a) shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority (a) shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority (a) shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds applicable to the maintenance of such roads.

Forms for use under this section will be found in *Encyclopædia of Forms and Precedents*, Vol. VII., pp. 223, 224.

The M. of H. has power under s. 57 (3) of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 923, to enforce the performance by a district council of any of its functions relating to public health which it is under a duty to perform. As the duties of an urban authority in relation to highways are contained in the P. H. A., 1875 (13 Halsbury's Statutes 623), it appears that the Minister might take action under the subsection referred to, but it is doubtful if he would do so as roads are now within the jurisdiction of the Minister of Transport.

Under the L. G. A., 1929, Pt. III.; Vol. V. and 10 Halsbury's Statutes 903, rural district councils cease to be highway authorities (s. 30, *ibid.*), and "classified roads" in urban districts are taken out of the jurisdiction of the district council and vested in the county council upon whom the functions in respect of such roads are conferred (s. 31, *ibid.*; Vol. V. and 10 Halsbury's Statutes 905).

A county council may delegate its functions in respect of "county roads" to a district council (s. 35, *ibid.*), but where such delegation takes place the section in the text will not apply since the county council and *not* the district council are the "highway authority" in respect of such roads. Provision is made by s. 36 (1), *ibid.*, for dealing with default by a district council in such cases.

Under s. 32, *ibid.*, the councils of urban districts of a population exceeding 20,000 may claim to retain the county roads in their area, and in respect of such "retained county roads" are "to have the same functions as if they were as respects that road the highway authority." The section in the text might, therefore, be invoked by a county council to enforce the duties of an urban council in respect of roads "retained" under that section of the L. G. A., 1929, and of unclassified roads.

(a) The county authority are now the county council. See note (c) to s. 38, *post*, p. 4614. There is a similar provision in s. 16 of the L. G. A., 1894 (*post*, p. 4902), which enables a parish council to prefer a complaint.

(b) This order may be made notwithstanding a *bonâ fide* dispute as to whether the road in question is a highway at all (*R. v. Cheshire JJ.* (1883), 48 J. P. 262; 50 L. T. 483; 26 Digest 385, 1137). But the county authority are not bound to make the order if they are satisfied that the road is not a highway (*Ex parte Johnson* (1886), 50 J. P. N. 313; 2 T. L. R. 619; 26 Digest 385, 1138). The procedure to compel the county council to make an order is by rule *nisi* for a *mandamus* (*R. v. Dorset C. C.* (1902), 67 J. P. 19). See also *R. v. West Sussex C. C.* (1921), 85 J. P. 162; 26 Digest 293, 247.

(c) If the county authority do not cancel or modify their order they are bound to order an indictment, though the fact that the road is a highway as well as the liability to repair is in dispute. See *R. v. Cheshire JJ.*, *supra*; and *R. v. Bedfordshire C. C.*, Times, February 4th, 1895, where a rule for *mandamus* to the county authority to prefer an indictment was made absolute without opposition in a case where the county authority refused to cancel or modify their order after notice from the highway authority that they declined to comply with such order until their liability had been determined by a jury, whereupon the county council had resolved not to direct an indictment to be preferred.

(d) Although a highway authority cannot be indicted at common law for non-repair of a highway (*R. v. Poole Corporation* (1887), 19 Q. B. D. 602; 52 J. P. 84; 26 Digest 376 1016), yet they may be indicted if proceedings are taken under this section (*R. v. Wake-*

**Note to
Section 10.**

field Corporation (1888), 20 Q. B. D. 810; 52 J. P. 422; 26 Digest 385, 1140. As to the form of the indictment, see *R. v. Biggleswade R. D. C.* (1900), 64 J. P. 442; 26 Digest 384, 1134; *R. v. Southport Corporation* (1900), 65 J. P. 184; 26 Digest 385, 1141. See also *R. v. Crompton U. D. C.* (1902), 66 J. P. 566; 86 L. T. 762; 26 Digest 377, 1025. Appeals from a conviction on indictment for non-repair of a highway lie to the Court of Appeal (Supreme Court of Judicature (Consolidation) Act, 1925, s. 29; 4 Halsbury's Statutes 160).

11. [Duration of office of waywarden].

Section 11 became inoperative by the passing of s. 25 of the L. G. A., 1894, *post*, p. 4905, and s. 12 is repealed by the S. L. R. A., 1883 (18 Halsbury's Statutes 986).

12. [Repeal of part of Highway Act, 1862, s. 7.]

[COUNTY] ROADS.

The word "county" has been substituted for "main" by reason of s. 29 (1), L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 903. See headnote to the Act in the text, *ante*, p. 4602. Although "county roads" has a wider meaning than "main road," roads may still become "county roads" in consequence of a declaration made under s. 15 of this Act, *post*, p. 4606, as amended by the L. G. A., 1929, s. 37.

As to the functions of a county council in respect of county roads, see s. 11, L. G. A., 1888, *post*, p. 4726, and s. 29, L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 912.

Councils of urban districts of a population exceeding 20,000 may claim to retain "county roads" (s. 32, L. G. A., 1929).

A county council may delegate functions in respect of "county roads" to district councils, urban or rural (s. 35, *ibid.*).

13. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the thirty-first day of December one thousand eight hundred and seventy (a) and the date of the passing of this Act, ceased to be a turnpike road (b), and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a [county](c) road. . . . (d).

Disturnpiked
roads to become
[county] roads.

(a) A provision in the Turnpike Acts coming into operation before December 31st, 1870, that turnpike trustees should not spend money or levy toll upon certain portions of turnpike roads did not prevent such portions of the roads from being still turnpike roads on December 31st, 1870, within the meaning of s. 13 of the Highways and Locomotives (Amendment) Act, 1878, *supra*. So held as to an agreement under the L. G. A., 1858, s. 41, made on December 31st, 1870, between turnpike trustees and a corporation, under which the turnpikes upon certain portions of turnpike roads were removed, and the repair of such portions was undertaken by the corporation (*West Riding JJ. v. R.* (1883), 8 App. Cas. 781; 48 J. P. 228; 26 Digest 266, 69).

(b) The corporation of the borough of Rochdale was the highway authority of the Rochdale highway area. Under ss. 47—50 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 546, 547), the obligation to repair all public highways within a "town" was imposed upon the corporation, and the trustees of certain turnpike roads were forbidden to collect any toll or lay out any money on any road within that area. By a local Act of 1872 the boundaries of the borough were enlarged, and all the provisions of the Acts relating to the "town" were made applicable to the enlarged area of the borough. The effect was that further portions of turnpike roads were for the first time brought within the area of the borough, and within the operation of the Towns Improvement Clauses Act, 1847 (*op. cit.*, 531):—*Held*, reversing the decision of the Court of Appeal, that these further portions being only parts of turnpike roads, had not "ceased to be turnpike roads" and were not to be deemed to be "main roads" within the above section (*Lancashire JJ. v. Rochdale Corporation* (1883), 8 App. Cas. 494; 48 J. P. 20; 26 Digest 266, 68). In 1855 a portion of a turnpike road was included in an improvement district under a local Act incorporating the Towns Improvement Clauses Act, 1847. Thereupon, by virtue of ss. 47—51 of the latter Act the maintenance of this portion of the road became vested in the improvement commissioners, and the turnpike trustees ceased to have power to collect toll or lay out money upon it. In 1877 the turnpike trust expired. The commissioners were the highway authority for the district, and the district was a highway area within the meaning of the above section:—*Held*, that notwithstanding the operation of ss. 47—51 of the Towns Improvement Clauses Act, 1847, the road only ceased to be a turnpike road and became a main road within the above section upon the

**Note to
Section 13.**

expiration of the turnpike trust (*Lancaster County JJ. v. Newton-in-Makerfield Improvement Commissioners* (1886), 11 App. Cas. 416; 51 J. P. 68; 26 Digest 267, 70).

(c) "County" is substituted for "main" by reason of s. 29 (1), L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 903. See headnote to this Act, *ante*, p. 4602.

(d) The remainder of this section is repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019), having been rendered obsolete by s. 11 of the L. G. A., 1888, *post*, p. 4726.

**Description of
highway areas.**

14. The following areas shall be deemed to be highway areas for the purposes of this Act; (that is to say),

(1) Urban sanitary districts (a):

(2) Highway districts:

(3) Highway parishes not included within any highway district or any urban sanitary district (b).

(a) The expression as defined by s. 38, *post*, p. 4613, did not include quarter sessions boroughs. But these boroughs are now included by virtue of the L. G. A., 1888, s. 35 (4), *post*, p. 4748, and s. 38 (3), *post*, p. 4751.

Where the quarter sessions had for many years paid half the expenses of maintaining a road under the belief that it was a main road for which they were liable, and it was afterwards discovered that they were not liable by reason of the road being within a borough, it was held that an action would not lie in the name of the justices to recover the sums so paid to the highway authority (*Kent JJ. v. Sandgate L. B.* (1891), 7 T. L. R. 571).

(b) Highway districts and highway parishes are now obsolete. In all areas not within an urban district the county council are the highway authority (s. 30, L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 904). The county council are also the highway authority in respect of certain roads in urban districts (ss. 31 and 32, *ibid.*).

**Power to de-
clare ordinary
highway to be
a [county] road.**

15. Where it appears to any highway authority that any highway within their district ought to become a [county] (a) road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise (b), such highway authority may apply to the county authority (c) for an order declaring such road, as to such parts as aforesaid, to be a [county] (a) road; and the county authority (c), if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a [county] (a) road, shall make an order accordingly (d).

A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority (c) made within a period of not more than six months after the making of the first-mentioned order ().

Forms for use under this section will be found in *Encyclopædia of Forms and Precedents*, Vol. VII., p. 230.

(a) "County" is substituted for "main" by reason of s. 29 (1), L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 903. See headnote to this Act, *ante*, p. 4602.

(b) An application may now be made for an order under this section on the ground that the road is a road situate in a part of an urban district which is of a rural character (s. 37 (1), L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 912). This additional ground is added because by the combined operation of ss. 29 (1) and 30, *ibid.*, all roads in rural districts become "county roads." A county council may by agreement with an urban district council undertake the repair of any unclassified road in the district (s. 34, *ibid.*). If, however, a county council refuse to enter into such an agreement and the road is situate in a rural part of the district an application may be made under this section as amended, and if the county council refuse to make a declaration an appeal will lie to the M. of T. See note (d), *infra*.

(c) The county council are now the county authority (see note (c) to s. 38, *post*, p. 4614).

(d) If a county council refuse to make the order or fail for six months after the date of the application to make the order, an appeal will lie to the Minister of Transport who may, after considering any representations made by the county council and if required by them holding a local inquiry, himself make an order declaring the highway to be a county road (s. 37 (2), L. G. A., 1929). An order made by the Minister is to have effect as if it were

an order made and confirmed by the county council under this section and will come into operation on a date to be fixed by the order (s. 37 (3), *ibid.*). An order made by the Minister on an appeal against a refusal to make an order will not, therefore, require confirmation by the county council, nor will it require to be deposited with the clerk of the peace.

**Note to
Section 15.**

(e) If an order made by a county council is not confirmed by the county council within six months of the making of the order an appeal will lie to the Minister of Transport, and the Minister may himself make an order after considering any representations made to him by the county council and if required by them holding a local inquiry (s. 37 (2), L. G. A., 1929). An order made by the Minister is to have effect as if it were an order made and confirmed by the county council under this section and will come into operation on a date to be fixed by the order (s. 37 (3), *ibid.*).

16. . . . where it appears to a county authority (a) that any road within the county which has become a [county] road *in pursuance of this Act* (b) ought to cease to be a [county] road and become an ordinary highway, such authority may apply to the Local Government Board for a *Provisional Order* declaring that such road has ceased to be a [county] road and become an ordinary highway (c).

Power to reduce [county] road to status of ordinary highway.

The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it . . . ought to cease to be a [county] road and become an ordinary highway shall make a *Provisional Order* accordingly *to be confirmed as hereinafter mentioned*.

All expenses incurred in or incidental to the making or confirmation of any Order under this section shall be defrayed by the county authority (a) applying for such Order.

Parts of this section were repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019), and are here omitted. The remainder of the section is amended by s. 4 of the Highways and Bridges Act, 1891, *post*, p. 4833, whereby it is provided that s. 16 of the Highways and Locomotives (Amendment) Act, 1878, shall apply to any part of a county road in any county, and so much of that section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, shall be repealed. No such order is to be made in respect of any county road within a municipal borough until any representation by the borough council has been considered and, if the council so require, a local inquiry has been held (L. G. A., 1929, s. 31 (4); Vol. V. and 10 Halsbury's Statutes 905). "Main road" in the text is to be read as "county road" (s. 29 (1), L. G. A., 1929).

An order under this section cannot be made in respect of a "classified road" (s. 31 (3), L. G. A., 1929).

(a) The county council are now the county authority. See note (c) to s. 38, *post*, p. 4614.

(b) The words in italics are repealed by Sched. XII, Pt. III., of the L. G. A., 1929. The expression "county roads" not only includes roads which have or may become "county roads" under this Act but also all roads transferred to the county council under the L. G. A., 1929 (see s. 29 (1), *ibid.*, Vol. V. and 10 Halsbury's Statutes 903). An application may therefore now be made by the county council in respect of any "county road" within the definition in that subsection. In view of the redistribution of highway functions made by the L. G. A., 1929, it is improbable that applications will be made under this section except where a road has been declared a "county road" under s. 15, *ante*, p. 4606, as amended on the ground that it is in a rural part of an urban district and a change takes place in the character of the part of the district, or where an order constituting a rural district part of an urban district has provided that the unclassified roads shall continue to be "county roads" under s. 31 (6) of the L. G. A., 1929.

(c) The L. G. B. was superseded by the Ministry of Health, but the powers of the department relating to highways are now vested in the Ministry of Transport. See Ministry of Transport Act, 1919, *post*, p. 5195, and the Ministry of Transport (Ministry of Health) (Exception of Powers) Order, 1919. A road which ceased to be a turnpike within the period specified by the first paragraph of this section, and had become a main road, as no application for a Provisional Order was made before February 1st, 1879, was not excluded from the operation of this paragraph, and the L. G. B. were therefore held to have jurisdiction to make an Order declaring such road an ordinary highway upon an application made subsequently to February 1st, 1879 (*R. v. L. G. B.* (1885), 15 Q. B. D. 70; 49 J. P. 580; 28 Digest 268, 75).

The Minister cannot make an order under this section in respect of a road which is for the time being a "classified road" as defined by s. 134, L. G. A., 1929 (s. 31 (3), *ibid.*).

**Note to
Section 16.**

In response to a proposal of a county council that an order should be issued disclaiming all the roads in a county, the L. G. B. stated that they were not prepared to entertain an application of such comprehensive scope. The Board pointed out that the section required that before taking action to reduce a main road to the status of an ordinary highway they must be satisfied that the road ought to cease to be a main road, and that they were of opinion that it was intended that in coming to a decision in such a case they should have regard to the special circumstances of the particular road proposed to be disclaimed. For the Board to decide that all the roads in a county should be disclaimed on the sole ground that the county council considered the system introduced by the L. G. A., 1888, *post*, p. 4722, as regards the maintenance, etc. of main roads to be open to objection, would, in their opinion, be in direct opposition to the evident intention of the Acts bearing on the question, even if it could be shown that all the highway authorities concerned concurred in the scheme. The M. of T. would, no doubt, take a similar view if a county council made a similar application with regard to all county roads in the county other than classified roads.

17. [Turnpike road in several counties].

Section 17 is now repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173), as obsolete since the extinction of all turnpike trusts.

Accounts of
expenses of
maintenance of
[county] roads.

18. Every highway authority shall keep, in such form as may be directed by the county authority (a), a separate account of the expenses of the maintenance of the [county] roads within their jurisdiction, and shall forward copies thereof to the county authority (a) at such time or times in every year as may be required by the county authority (a), . . . (b).

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county authority (a), the county authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of the maintenance of [county] roads by such highway authority for the year in which such default occurs (c).

(a) The county authority are now the county council. See note (c) to s. 38, *post*, p. 4614.

(b) Certain words here, relating to the audit of accounts, were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1282.

(c) This section is not repealed by the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 883. But as the only highway authorities maintaining "county roads" other than the county council are urban district councils who claim to retain "county roads" under s. 32 of the L. G. A., 1929, the section will only apply to such councils. Provisions as to the estimates to be submitted by such councils to the county councils and the payments to be made by county councils in respect of such retained county roads are contained in s. 33, *ibid.*; Vol. V. and 10 Halsbury's Statutes 908.

Where a county council has delegated functions to a district council in respect of county roads under s. 35, *ibid.*, the section in the text will not apply since the district councils are not "highway authorities" in respect of county roads.

Highway district
situate in
more than one
county.

19. Where a highway district is situate in more than one county, the provisions of this Act, with respect to the expenses of the maintenance of [county] roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county.

20. Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any main road or part of a main road within their district to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out

of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged. Section 20.

This section is repealed by Sched. XII., Part III., of the L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 1016.

Bridges.

21. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the Bridges Act, 1803, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair. Certain existing bridges may be accepted by county authority.
43 Geo. 3, c. 59.

By s. 6 of the L. G. A., 1888, *post*, p. 4725, the county council, who are now the "county authority," have power to purchase, or take over on terms to be agreed upon, existing bridges not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected. See also the Highways and Bridges Act, 1891, *post*, p. 4833, the Bridges Act, 1929; Vol. V. and 9 Halsbury's Statutes 268, and s. 6 of the Crown Lands Act, 1906 (3 Halsbury's Statutes 328), enabling the Commissioner of Crown Lands to convey bridges to local authorities.

22. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified in accordance with the provisions of section five of the Bridges Act, 1803, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one-half the cost of erecting such bridge. Contribution out of county rates towards erecting bridges.
43 Geo. 3, c. 59

The county authority, i.e. the county council, may for this purpose borrow on mortgage of the county rate under County Bridges Act, 1841. See the County Bridges Loans Extension Act, 1880 (9 Halsbury's Statutes 267).

Extraordinary Traffic.

23. [This section has been repealed by the Road Traffic Act, 1930, s. 122, Sched. V. (Vol. V. and 23 Halsbury's Statutes 687, 695). See now s. 54 of that Act (Vol. V. and *op. cit.* 649).]

Discontinuance of unnecessary Highways.

24. If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in this section referred to "as the applicant authority") may apply to the court of summary jurisdiction of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and upon public notice, appoint a time and place not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public. Unnecessary highways may be declared not repairable at the public expense.

On the day and at the place appointed, the court shall hear any person objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

Section 24. If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate. Public notice of the time and place appointed for hearing a case under this section shall be given by the applicant authority as follows; (that is to say,)

- (1) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers, in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing; and
- (2) By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions (a).

This appeal will still be open to quarter sessions, for the L. G. A., 1888, s. 3 (viii), *post*, p. 4722, only transferred to the county council the powers of quarter sessions as the county authority. See also s. 78 (2) of that Act, *post*, p. 4759.

Appointment of Surveyors in certain Parishes.

25. [Removal of doubt as to appointment of surveyors in certain parishes].

This section became inoperative by reason of s. 25 of the L. G. A., 1894, *post*, p. 4905, by which rural district councils were made the highway authorities in their districts. Their functions are now, however, transferred to the county council by L. G. A., 1929, s. 30; Vol. V. and 10 Halsbury's Statutes 904. The section was finally repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1282.

Byelaws by County Authority.

Power of county authority to make byelaws.

26. A county authority may from time to time make, with respect to all or any [county] roads or other highways within any highway area in their county, and when made alter or repeal, byelaws for all or any of the purposes following; (that is to say,)

- (1) For prohibiting or regulating the use of any waggon wain cart or carriage drawn by animal power and having wheels of which the fellys or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon wain cart or carriage as may be specified in such byelaws; and

(2) For prohibiting or regulating the use of any waggon wain cart or other carriage drawn by animal power not having the nails on its wheels counter-sunk in such manner as may be specified in such byelaws, or having on its wheels bars or other projections forbidden by such byelaws; and

(3) For prohibiting or regulating the locking of the wheel of any waggon wain cart or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan slipper or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and

(4) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; and

(5) [For regulating the use of bicycles] (a).

Fines to be recovered summarily may be imposed by any such byelaws on persons breaking any byelaw made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the byelaws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

The county council are now the county authority. As to the confirmation of these byelaws, see s. 35, *post*, p. 4612.

(a) The provisions of this sub-section were repealed by s. 85 of the L. G. A., 1888, *post*, p. 4762. That section contains general regulations for bicycles, tricycles, etc.

Saving for Materials.

27. Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875 (a), all mines and minerals of any description whatsoever under any disturnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority; but so nevertheless that in such working and getting no damage shall be done to the road or highway.

To whom
minerals under
disturnpiked
roads to belong
11 & 12 Vict.
c. 63.
38 & 39 Vict.
c. 55.

This provision seems to have been inserted *ex abundanti cauteld*. See *per* CORTON, L.J., in *Rolls v. St. George-the-Martyr, Southwark, Vestry* (1880), 14 Ch. D. 785, at p. 799; 44 J. P. 680; 26 Digest 330, 627. A railway company constructed a railway on the level across a highway in the district of which the relators were the urban sanitary authority. Subsequently the defendants worked coal mines in a proper and usual manner beneath the highway, with the result that a gradual and uniform subsidence of the highway, railway, and surrounding land to the extent of about ten feet vertically took place. No actual damage was done to the highway thereby, nor was it rendered less convenient, but the railway company placed ballast under their line so as to maintain it at its original level, thus forming an embankment obstructing the use of the highway:—*Held*, in an action against the defendants, that upon the facts there was no case for an injunction or for substantial damages; but *per* COLLINS, J., that, assuming the highway to be vested in the relators under s. 149 of the P. H. A., 1875, *ante*, p. 4375, they were entitled to judgment with nominal damages for the injury to their proprietary right (*Att.-Gen. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 59-J. P. 70; 26 Digest 331, 629). See also *Lodge Holes Colliery Co., Ltd. v. Wednesbury Corporation*, [1908] A. C. 323; 72 J. P. 417; 26 Digest 331, 630. The remainder of this section extending it to the Isle of Wight and to South Wales is repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173), as having been rendered unnecessary by the L. G. A., 1888, ss. 12, 13, *post*, pp. 4734–5.

(a) See this section at p. 4375, *ante*.

Section 34.

PART II.

AMENDMENT OF LOCOMOTIVE ACTS, 1861 AND 1865.

The whole of this Part of the Act in so far as it remained unrepealed (*viz.*, ss. 28, 30, and 33; 9 Halsbury's Statutes 182—184), was repealed by the Road Traffic Act, 1930. See now *ibid.*, s. 30 (Vol. V. and 23 Halsbury's Statutes 633), and notes thereto.

PART III.

PROCEDURE AND DEFINITIONS.

Confirmation of
Provisional
Order.

34. It shall be lawful for the Local Government Board to submit any Provisional Order made by them under this Act to Parliament for confirmation, and without such confirmation a Provisional Order shall not be of any validity.

The L. G. B. is now superseded here by the Minister of Transport. The necessity for a confirming Act is no longer required in the case of orders under s. 16. See the note to that section, *ante*, p. 4607.

Confirmation of
byelaws.

35. A byelaw made under this Act, and any alteration made therein and any repeal of a byelaw, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board.

A byelaw made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

The L. G. B. is now superseded here by the Minister of Transport.

Recovery of
penalties and
expenses.

36. All offences fines and expenses under this Act, or any byelaw made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts (*a*).

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrates, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty session or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(*a*) The definition of this expression here following is repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). See now the Interpretation Act, 1889, s. 13 (10) (*op. cit.*, 997).

With regard to the liability of servants to penalties and the exoneration of the owner in certain cases, see the Locomotives Act, 1898, s. 13.

Form of appeal
to quarter
sessions.

37. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom . . . to the next practicable court of quarter sessions

The remainder of this section is repealed by the S. J. A., 1884 (11 Halsbury's Statutes 355).

38. In this Act—

Section 38.

“County” has the same meaning as it has in the Highway Acts, 1862 and 1864 (a), except that every liberty (b) not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county:

Interpretation.
25 & 26 Vict.
c. 61.
27 & 28 Vict.
c. 101.

“County authority” means the justices of a county in general or quarter sessions assembled (c):

“Borough” means any place for the time being subject to the Municipal Corporations Act, 1835, and the Acts amending the same (d):

“Highway district” (e) means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts:

25 & 26 Vict.
c. 61.
27 & 28 Vict.
c. 101.

“Highway board” means the highway board having jurisdiction within a highway district:

“Highway parish” means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts:

25 & 26 Vict.
c. 61.
27 & 28 Vict.
c. 101.

“Highway authority” means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties (f):

“Rural sanitary district” and “rural sanitary authority” mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875 (g):

38 & 39 Vict.
c. 55.

“Urban sanitary district” (h) and “urban sanitary authority” mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875 (i), except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district; and where part of a parish is included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act:

38 & 39 Vict.
c. 55.

The metropolis” means the parishes and places mentioned in the Schedules A., B., and C., annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city:

18 & 19 Vict.
c. 120.

“Quarter sessions” includes general sessions:

“Petty sessional division” means any division for the holding a special sessions formed or to be formed under the provisions of the Division of Counties Act, 1828, or any Act amending the same; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate or district constituted a petty sessional division by the Petty Sessions Act, 1849:

9 Geo. 4. c. 43.

12 & 13 Vict.
c. 18.

“Locomotive” means a locomotive propelled by steam or by other than animal power (k):

“Person” includes a body of persons corporate or unincorporate.

(a) Although for the purposes of the Highway Act, 1862 (9 Halsbury's Statutes 122), boroughs are not to be considered parts of counties, yet for the purposes of s. 13, *ante*,

**Note to
Section 38.**

p. 4605, it was held that the word "county" was used geographically, and so, therefore, as to include a borough within the county (*Over Darwen Corporation v. Lancashire JJ.* (1884), 48 J. P. 437; affirmed, 15 Q. B. D. 20; 26 Digest 395, 1221).

(b) The recorder of such a liberty is a county authority so as to be able to hear an application under s. 15, *ante*, p. 4606, to have certain roads declared main roads (*R. v. Dover Recorder* (1884), 49 J. P. 86; 32 W. R. 876; 26 Digest 267, 73).

(c) The powers and duties of the quarter sessions as the county authority are now transferred to the county council by the L. G. A., 1888, s. 3 (viii), *post*, p. 4722.

(d) Now the Municipal Corporations Act, 1882. See s. 242 of that Act, *post*, p. 4640.

(e) See *Middlesex C. C. v. Willesden and Hendon U. D. Councils* (1896), 60 J. P. 630; 26 Digest 280, 170.

(f) By s. 25 of the L. G. A., 1894, *post*, p. 4905, the rural district councils were constituted the highway authorities for their districts, but county councils are now the highway authority in rural districts (s. 30, L. G. A., 1929; Vol. V. and 10 Halsbury's Statutes 904).

(g) See *ante*, p. 738.

(h) See *Middlesex C. C. v. Willesden and Hendon U. D. Councils*, *supra*.

(i) *Ante*, p. 738.

(k) This includes a tricycle capable of being propelled by steam (*Parkyns v. Preist* (1881), 7 Q. B. D. 313; 45 J. P. 751; 42 Digest 863, 147); but not a stream tramcar used by virtue of statutory powers (*Bell v. Stockton Steam Tramways Co.* (1887), 51 J. P. 804; 3 T. L. R. 511; 43 Digest 348, 75; and see Locomotives on Highways Act, 1896; 19 Halsbury's Statutes 64).

THE PUBLIC HEALTH (INTERMENTS) ACT, 1879.

(42 & 43 VICT. c. 31.)

An Act to amend the Public Health Act, 1875, as to Interments.

[21st July 1879.]

Short title
and
construction.
38 & 39 Vict.
c. 55.

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

The pro-
visions of
38 & 39 Vict.
c. 55,
extended to
cemeteries.

2.—(1) The provisions of the principal Act, as to a place for the reception of the dead before interment, in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery.

38 & 39 Vict
c. 55, ss. 32—
34.

(2) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district.

(3) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

The provisions of the principal Act here referred to were ss. 141—143 (13 Halsbury's Statutes 682, 683) (now repealed and replaced by the P. H. A., 1936, s. 198, *ante*, p. 466). The text, therefore, enables the local authority to provide and fit up a cemetery, and they must do so if the L. G. B. (now the Minister of Health) so require. They may also make byelaws with respect to its management and charges for the use thereof.

On August 19th, 1879, the L. G. B. issued a circular letter in which the duties and powers of local authorities are clearly set forth: and the following are extracts

from such letter (with added references to the provisions of the Burial Act, 1900, the text of which with notes is set out, *post*, p. 4990, and other Acts):

**Note to
Section 2.**

"The legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute; but, seeing that it is incorporated with the Public Health Act, there can be no doubt that wherever, in the interests of the public health, it is necessary that a cemetery should be provided in any locality, the legislature contemplated that the local authority would exercise the important powers now conferred upon them. *Circumstances under which cemetery should be provided.*

"The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action:

- "1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided;
- "2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health;
- "3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place, or within certain limits.

"There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rites. On all or any of the foregoing grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded, a compulsory order would necessarily follow."

* * * * *

[In both urban and rural districts the expenses would now be met out of the general rate. If, however, in a rural district the expenses were charged on a contributory place only they would be met out of a special rate. See the R. and V. A., 1925, *ante*, p. 2113. See, however, s. 190 (4) of the L. G. A., 1933, *ante*, p. 1018, which enables a rural district council to defray any special expenses in whole or in part as part of their general expenses. The paragraph of the circular dealing with cost is therefore printed in italics.]

"*In the case of an urban sanitary authority the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.* *Incidence of cost.*

"*If, however, the cemetery were provided for a separate contributory place, by which is meant a parish or special drainage district, or so much of a parish as is not within an urban sanitary district [now see the L. G. A., 1894, s. 36 (10 Halsbury's Statutes 800)], or a special drainage district, it would be competent for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the pound, in the case of special expenses the amount is raised by a separate rate to which lands are assessable at only one-fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee [and to a parish council (see L. G. A., 1894, s. 15 (op. cit. 787))] the exercise of their powers in connection with the management of any cemetery which may be required for any contributory place.*

* * * * *

"With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of s. 141 of the Public Health Act, 1875, will enable the sanitary authority to make byelaws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein. *Regulation of cemetery.*

**Note to
Section 2.**

[As to fees, however, reference should now be made to s. 3 of the Burial Act, 1900 *post*, p. 4991.]

"It should be borne in mind, however, that such byelaws must be made in conformity with the Public Health Act, and be confirmed by the central authority; and the President contemplates that the department should hereafter frame a series of model byelaws to be recommended for adoption.

"In order to make further provision for the due maintenance and management of a cemetery, the recent statute incorporates the Cemeteries Clauses Act, 1847, *ante*, p. 4211.

"That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated, either wholly or partly with the Public Health Act, 1875, *ante*, p. 4331, and the particular Act referred to has previously been incorporated with some general and several local improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

"The President, therefore, thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exercisable by them under the incorporated enactments.

"With respect to the Making of the Cemetery.

"The cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupier. [Reduced to 100 yards by the Burial Act, 1906; *post*, p. 5029.]

"The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery. [As to chapels, special provision is further made by the Burial Act, 1900, s. 2; *post*, p. 4990.]

"*The cemetery must be enclosed by substantial walls, or iron railings, of the height of eight feet at least.* [But the application of this provision to cemeteries provided under the Public Health (Interments) Act, 1879, is now repealed by the Burial Act, 1900, s. 10; *post*, p. 4994.]

"The sanitary authority must keep the cemetery, and the buildings and fences thereof, in complete repair and in good order and condition.

"With respect to Burials.

"The sanitary authority may set apart a portion of the cemetery for burials according to the rights of the Established Church, and the bishop of the diocese may, on the application of the sanitary authority, consecrate the portion so set apart. [See also s. 1 of the Burial Act, 1900; *post*, p. 4990.]

"A chapel, to be approved by the Bishop, must be built on the consecrated part for the performance of the burial service of the Established Church. [See also as to other chapels, s. 2 of the Burial Act, 1900; *post*, p. 4990.]

"A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

"The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Established Church [see also the Burial Act, 1900, ss. 6 and 9; *post*, pp. 4993, 4994], and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church. [See also the Burial Act, 1900, s. 2; *post*, p. 4990.]

"With respect to exclusive rights of Burial and Monumental Inscriptions.

"The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in

the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

"It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

"The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the legislature."

A memorandum as to the sanitary requirements of cemeteries was issued by the L. G. B. The M. of H. should be consulted as to these requirements.

When the L. G. B. (now the Ministry of Health) are asked to sanction a loan for the provision of a cemetery under this Act, the following documents and particulars seem to be required :

Loans for
cemeteries :
Practice of
the M. of H.

(1) A copy of a resolution of the local authority authorising application to be made for sanction to a loan.

(2) A plan of the site, drawn to scale, having the position of the trial holes marked upon it.

(3) A key plan showing the locality of the site, its situation with regard to adjoining properties and the points of the compass, and the means of access to the ground and the position of any sources of domestic water supply near the site.

(4) Plans, sections and detailed estimates of the cost of all the proposed works.

(5) Financial particulars of the district (in a form supplied).

(6) A report by the medical officer of health on the suitability of the proposed site. The question of the freedom from risk of contaminating sources of domestic water supply, and of nuisance from the disposal of drainage water should receive consideration in this report.

(7) The area and precise locality of the proposed ground.

(8) Whether any part of the proposed burial ground is outside the district, and, if so, the names of the civil parish and sanitary district. Proofs similar to those required by the Board in the case of sewage works beyond district (see note to the P. H. A., 1936, s. 16, *ante*, p. 35), should also be supplied of the due observance of the requirements of s. 2 (2) of this Act, *ante*, p. 4614.

(9) The average annual number of burials in the district for ten years.

(10) Whether an Order in Council has been issued prohibiting the opening of a new burial ground in the parish in which the site is situate without the consent of the Secretary of State or the Board (now the Minister of Health). If so, a reference to it. [A local authority are frequently unable to answer this question, and the department is willing to direct a search of the records.]

(11) The distance of the site from—

(a) the nearest inhabited part of the district ;

(b) the remotest part of such district ;

(c) the most densely populated part of the district.

(12)—(a) Whether there are any, and if so, how many, dwellings within 100 yards of the site.

(b) Whether the consents in writing of the owners, lessees and occupiers of such dwellings have been obtained.

(13) Whether there are any sources of domestic water supply near the site. If so, a description of these sources and a statement of the distance in each case from the site.

(14) The nature of the soil as ascertained by trial holes at least eight feet deep. (The holes should preferably be sunk near each corner and the centre, and in other parts of the ground.)

(15) Whether the soil is free from water to a depth of eight feet.

If not—

(a) the depth at which water is met with ;

(b) what means are available for the drainage of the subsoil to the depth of eight feet and for the disposal of the resulting water.

Note to
Section 2.

(16) Whether an agreement (subject to the approval of the Ministry being obtained) has been entered into for the purchase of the site.

(17) The price to be paid for the land.

The terms now allowed by the Minister of Health for the repayment of loans for cemetery purposes are:—

	Maximum
For land	60 years
„ building and drainage works	30 „
„ laying out and planting	20 „
„ fencing and gates	15—20 „

Control of
the
Ministry.

It will be seen that the Ministry must be approached upon the subject of the provision or extension of a cemetery under the Act (a) if a loan is proposed, (b) if compulsory powers of purchase are required, (c) if the cemetery is to be situate beyond the district, and a statutory objection has been made, or (d) if there is an Order in Council in force prohibiting the opening of a new burial ground in the parish without the previous approval of the central department. If none of these conditions apply to the proposals of a local authority, they are at liberty to proceed without consulting the Ministry. A rural district council providing a cemetery for one or more parishes in their district should obtain a special expenses order under the L. G. A., 1933, s. 190 (3), *ante*, p. 1017, even if no loan is proposed. But they may defray such expenses in whole or in part as part of their general expenses (s. 190 (4), L. G. A., 1933, *ante*, p. 1018).

Advantages
of proceeding
under this
Act.

Inquiry was made of the L. G. B. as to the provision of a new burial ground for an ecclesiastical parish consisting of two rural parishes, one of which had not a parish council. The Board stated that if it were desired to provide and maintain a joint burial ground under the Burial Acts for the two civil parishes, the appointment of a joint committee under the L. G. A., 1933, s. 91, *ante*, p. 854, would be necessary, and that before this could be done the parish meeting of the parish without a council would have to obtain from the county council an order investing them with the requisite powers of a parish council. Other formalities would be involved by procedure under the Burial Acts. There would first have to be resolutions of the parish council and of the parish meeting of the respective parishes under the Burial Act, 1852, s. 23 (2 Halsbury's Statutes 197), expressing concurrence and agreement in providing a joint burial ground and apportioning the expenses. Following this, resolutions of the parish meeting of each parish under s. 19 of that Act (*op. cit.*, 195), authorising the expenditure, would be necessary; and, after the joint committee had been formed, further resolutions of the parish meetings of the respective parishes under s. 26 of the same Act (*op. cit.*, 198) would have to be passed approving of the contract for the acquisition of the site. As, therefore, procedure under the Burial Acts would involve considerable delay and trouble, the Board suggested that probably the preferable course would be for the rural district council to provide a cemetery for the parishes under the present Act. The Board observed that if proceedings were taken under this Act, the involved procedure under the Burial Acts would be avoided, and there would be no necessity for conferring upon the parish meeting parish council powers, the rural district council having, in fact, all the necessary powers for providing a cemetery for the joint use of any group of parishes within their district. Again, if a loan were required, the only consent necessary under this Act as regards the loan, would be that of the central department; whereas a loan for a burial ground provided under the Burial Acts would require the consent of the parish meeting of each parish, of the county council, and of the department. In conclusion, the Board suggested that the matter should be brought before the rural district council with a view to action by them under this Act.

An urban district council may provide a cemetery under this Act even if they are a burial authority under the Burial Acts, and, as in the case of rural areas (see note above), there are certain advantages in their doing so. Thus, under this Act, a term of sixty years is obtainable for the repayment of a loan for the purchase of land, thirty years being (see "Local Government," 1910, p. 97), the maximum under the Burial Acts; compulsory powers also are obtainable; and the consent of the vestry to the proposed expenditure and site is dispensed with. It may be

added that an urban council may effect an extension of a burial ground vested in them under the Burial Acts by proceeding under the Act of 1879, though the two grounds will strictly be separate burial grounds subject to different statutes.

**Note to
Section 2.**

If an urban council proceeding under this Act wish to limit the incidence of expense^s to part of the district, they may do so under the P. H. A., 1936, s. 11 (2), *ante*, p. 16

Model byelaws for cemeteries have been issued, with a prefatory memorandum (too long for insertion here), dealing with various practical matters.

Model
byelaws.

By the Cremation Act, 1902, s. 2, *post*, p. 4999, the expression "burial authority" in that Act "shall mean . . . any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879 . . ." By s. 4, *post*, p. 4999, the powers of a burial authority to provide and maintain cemeteries, or anything essential, ancillary, or incidental thereto, shall be deemed to extend to and include the provision and maintenance of crematoria. See the Act, *post*, p. 4999.

3. The Cemeteries Clauses Act, 1847, shall be incorporated with this Act.

10 & 11 Vict.
c. 65, incor-
porated with
this Act.

This Act is set out, *ante*, p. 4211.

THE PUBLIC WORKS LOANS ACT, 1879.

(42 & 43 VICT. c. 77) (a).

An Act to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant money for the purpose of Loans by the said Commissioners; and for other purposes in relation thereto. [15th August, 1879.]

1. This Act may be cited as "The Public Works Loans Act, 1879."

Short title.

(a) See the Public Works Loans Act, 1875, *ante*, p. 4544. The preamble to this Act was repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). As to the omission of the clause of enactment, see s. 4 of that Act (*op. cit.* 1020).

PART I.

AMENDMENT OF ACTS.

2. Where a loan is granted by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, and the rate of interest for such loan, fixed by the special Act which authorises the Commissioners to grant the loan, is a special rate less than five per cent., such loan shall, notwithstanding anything in the special Act, bear interest at a rate not less than the rate in the special Act, and such other rate as may be necessary, in the judgment of the Treasury, in order to enable the loans to be made without loss to the Exchequer (a).

Minimum rate
of interest for
loans.

(a) In the application of this Act to loans granted after June 28th, 1892, the above section is to have effect as if 4 per cent. were therein substituted for 5 per cent. See the Public Works Loans Act, 1892, s. 2, *post*, p. 4871.

3. [Restrictions on amount of loan to one borrower] (a).

(a) This section is repealed by the Public Works Loans Act, 1897, ss. 3, 12 (4), and Sched. II., *post*, p. 4944.

4. Nothing in this Act shall apply to any loan granted before the passing of this Act, nor to any instalments subsequently advanced in respect of such loan . . . (a).

Act not to
apply to old
loans.

THE PUBLIC WORKS LOANS ACT, 1881.

Section 4. Provided, that where though a loan has not been actually granted before the passing of this Act, negotiations for the same have proceeded so far as to make it in the opinion of the Treasury inequitable for such loan to be subject to the provisions of this Act or any of them, such loan shall, for the purposes of those provisions, be deemed to be a loan granted before the passing of this Act.

(a) The remainder of this paragraph relating to local matters or Irish matters only is here omitted.

5. [*Power to lend to Peabody Trustees*] (a).

(a) This section is now repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019).

6. [*Power to lend to labourers' dwellings companies*] (a).

(a) This section was repealed by the Housing of the Working Classes Act, 1890, s. 102. See now s. 123 of the Housing Act, 1936, *ante*, p. 1727.

7. [*Regulations as to advances by National Debt Commissioners to the Public Works Loan Commissioners*] (a).

(a) These sections were repealed by the National Debt and Local Loans Act, 1887 (12 Halsbury's Statutes 282), as from the date when an Act passed in the year 1887, authorising the advance of money for local loans (the Public Works Loans Act, 1887, *post*, p. 4700), came into operation, and without prejudice to any charge on the Consolidated Fund of any advance until the security for such advance should be exchanged in pursuance of the repealing Act. Section 9 had merely a local application, and is now repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). Section 10 (relating to the provision of money for the purpose of loans), s. 11 (relating to Ireland only), and the Schedule (containing certain repealed enactments), are also repealed by the same Act.

8. [*Application of Public Works Loans Act, 1875, ante, p. 4544, to money advanced by National Debt Commissioner*] (a).

(a) See note (a) to s. 7, *supra*.

* * * * *

THE PUBLIC WORKS LOANS ACT, 1881.

(44 & 45 VICT. c. 38) (a).

An Act to grant money for the purposes of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland; and for other purposes relating to Loans by those Commissioners.

[22nd August, 1881.]

Short title.

1. This Act may be cited as "The Public Works Loans Act, 1881."

(a) See the Public Works Loans Act, 1875, *ante*, p. 4544. The preamble to this Act was repealed by the S. L. R. A., 1894 (18 Halsbury's Statutes 1019). See also s. 4 of that Act (*op. cit.*, 1020) as to the omission of the clause of enactment.

PART I.

Grants of Money for Public Works Loan Commissioners during the period ending 30th June, 1882.

PART II.

Grant of Money for Public Works Commissioners, Ireland, during the period ending 30th June, 1882.

PART III.

Section 7.

Remission, etc. of Loans in various cases.

* * * * *

AMENDMENT OF ACTS.

7. Where the Public Works Loan Commissioners have, either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875 (a), or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act advance any sum for the completion, repair, improvement or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

Amendment of 38 & 39 Vict. c. 89, s. 22, as to rate of interest for loan.

(a) See s. 22, *ante*, p. 4551.

8. The Local Government Board (a) may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six (b) of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners either before or after the passing of this Act, on the security of a rate, has been applied to the purpose for which the same was advanced.

Expenses of ascertaining (under 38 & 39 Vict. c. 89, s. 36) that loans advanced by the Public Works Loan Commissioners have been properly applied.

Any such order may contain directions as to the parties by whom, and the rates out of which such expenses shall be borne, and on the application of the Local Government Board may be made a rule of the High Court of Justice in England, or of High Court of Session in either division of the Inner House thereof in Scotland.

(a) The L. G. B. has now been superseded by the Ministry of Health.

(b) See the section, *ante*, p. 4556.

9. The unapplied balance of any loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate, may, with the consent of the said commissioners, and of the central authority or department, if any, with whose sanction or consent such loan was authorised to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are properly applicable; and in construing section thirty-six (a) of the Public Works Loans Act, 1875, and section four (b) of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance as aforesaid is so applied, shall be deemed to be the purpose for which that portion of the loan was advanced (c).

Application of surplus balances of loans made by the Public Works Loan Commissioners.

41 Vict. c. 18.

(a) See the section, *ante*, p. 4556.

(b) See this section, *ante*, p. 4602.

(c) It will be observed that the present section applies only to unapplied balances of loans advanced by the Public Works Loan Commissioners. If, therefore, a loan sanction issued by the L. G. B. or Ministry of Health has been only partially acted upon, the section will not facilitate an advance of the balance by the Commissioners for the purposes of works not at first contemplated.

The necessity of obtaining consent under this section in requisite cases, is not dispensed with by L. G. A., 1933, s. 202, *ante*, p. 1037.

Section 10 relates to local matters only; and the remaining sections of the Act apply only to Ireland.

* * * * *

Section 1.

THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

(45 & 46 VICT. c. 15) (a).

An Act to provide for the better application of moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common. [19th June, 1882.]

Short title.

1. This Act may be cited as the Commonable Rights Compensation Act 1882.

(a) This Act is included in this work by reason of the provision which it contains in s. 2 (5), *post*, p. 4623, vesting recreation grounds in urban sanitary authorities when these are purchased out of moneys paid for the extinction of commonable rights under the Lands Clauses Consolidation Act, 1845, *ante*, p. 4104, and special Acts which authorise the taking or interfering with common lands. The preamble is repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

Application of
compensation
money for
common lands.

2.—(1) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act (a) and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners (b) as compensation for the extinguishment of commonable or other rights or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the Commissioners (c) to call a meeting of the persons interested in such money to consider the application thereof, and the Commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways :

8 & 9 Vict. c.
113, etc.

- (a) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid ;
- (b) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a Provisional Order for the regulation, of such common land, or of any application to Parliament for a private Bill or otherwise for the preservation and management of such common land as an open space ;
- (c) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same ;
- (d) In the purchase of additional land to be used as common land ;
- (e) In the purchase of land to be used as a recreation ground for the neighbourhood (d) ;

and any such resolution shall bind the minority and all absent parties, and the Commissioners (c) shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons or the legal personal representative of such survivor, shall, upon service of any such order of the Commissioners (c) as aforesaid upon them or any of them or any person on their behalf as the Commissioners (c) may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(2) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the Commissioners (c), pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said Commissioners (c) by such majorities as aforesaid. Section 2.

(3) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the Commissioners (c) under their seal, and upon such confirmation the land shall vest in the remaining and the newly-appointed trustees without any conveyance.

(4) The Commissioners (c) shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made by them under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the Schedule to this Act (e) for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878 (f).

(a) See ss. 99—107 inclusive of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 4141—4143.

(b) As to this Committee, see the Lands Clauses Consolidation Act, 1845, s. 103, *ante*, p. 4142, and the case of *Salmon v. Edwards*, [1910] 1 Ch. 552; 74 J. P. 177; 11 Digest 40, 556, there set out. Before 1802 the occupiers of certain cottages were accustomed to cut turf on large tracts of commonable and waste lands of a manor. In that year an Inclosure Act was passed by which commissioners were empowered to allot lands in severalty to the lord and other persons interested, and to allot to the lord in trust for the occupiers of the cottages portions of the waste for a turf common, to be managed as the lord and the churchwardens and overseers should order, and not to be depastured. The commissioners by their award, made in 1806, allotted to the lord of the manor, in trust for the occupiers for the time being of the cottages, 425 acres of waste for a turf common for the use of the cottagers. The commissioners also allotted to the lord and other persons interested portions of the enclosed lands in severalty in lieu of their rights and interests. A railway company took for the purposes of their undertaking part of the land allotted as a turf common, and the purchase money was paid into court. On a petition by the freeholder of the cottages for the distribution of the fund, it was held that the owners of the cottages had no claim on the fund; and that the lord of the manor was entitled to such part of the fund as represented the value of the soil in the land taken by the company. It was also held that the remainder of the fund was to be held as a charitable trust for the benefit of the occupiers of the cottages (*Att.-Gen. v. Meyrick*, [1893] A. C. 1; 57 J. P. 212; 11 Digest 29, 366). See this case commented on in *Simcoe v. Pethick*, [1898] 2 Q. B. 555; 11 Digest 75, 975. Where the relative values of commonable rights could not be strictly ascertained by reason of the land being built over, a fund was ordered to be divided equally among the commoners (*Weatherley v. Layton*, [1892] W. N. 165).

(c) See note (a) to s. 1 of the Commons Act, 1876, *ante*, p. 4563.

(d) It is only in this case that the urban district council have any interest. See sub-s. (5).

(e) In urban districts this local authority is the urban district council. See the Schedule *post*, p. 4624.

(f) Inclosure Act, 1845, ss. 34, 72—74, 92 (2 Halsbury's Statutes 454, 473—475, 482); Inclosure Act, 1846, s. 4 (*op. cit.* 519); Inclosure Act, 1852, s. 14 (*op. cit.* 543); Inclosure Act, 1857, ss. 12, 13 (*op. cit.* 560, 561); Commons Act, 1879 (*op. cit.* 602). See also the Commons Act, 1876, *ante*, p. 4568, especially ss. 7, 12, 22—29, *ante*, pp. 4565, 4570, 4576—8.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or of

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compensation
money for
recreation

Section 3. any other Act of Parliament, to any local authority as specified in the Schedule to this Act, or to the churchwardens and overseers of a parish (a) in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively (b).

grounds and
field gardens.

42 & 43 Vict.
c. 37.

(a) Overseers were abolished by s. 62 of the R. and V. Act, 1925, *ante*, p. 2222. As to property formerly held by them, see now the Overseers Order, 1927 (S. R. & O., 1927, No. 55), *ante*, p. 3595.

(b) See the Acts enumerated in note (f) to s. 2, *ante*, p. 4623.

Provision for
cases where
money paid by
way of
compensation
has already
been applied in
the manner
authorised by
this Act.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the Commissioners in manner provided by this Act (a), by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the Commissioners under their seal, be deemed to have been lawfully made under the provisions of this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions in this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land.

(a) The Act does not provide any method of calling a meeting. See s. 2, *ante*, p. 4623.

Deposit of
orders.

5. Copies of all orders made by the Commissioners under this Act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept (a).

(a) See Inclosure Act, 1845, s. 146 (2 Halsbury's Statutes 506); Inclosure Act, 1852, s. 27 (*op. cit.* 547).

Exception of
the New Forest.

6. This Act shall not extend to the New Forest (a).

(a) See Inclosure Act, 1845, s. 13 (2 Halsbury's Statutes 446).

SCHEDULE.

Situation of Land.	Local Authority.
Within the metropolis - - - -	The Metropolitan Board of Works (a).
Not within the metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish (b).

(a) Now the L. C. C.

(b) See note (a) to s. 3, *supra*.

THE MUNICIPAL CORPORATIONS ACT, 1882.

Section 1.

(45 & 46 VICT. c. 50)(a).

An Act for consolidating, with amendments, enactments relating to Municipal Corporations in England and Wales. [18th August, 1882.]

(a) The only surviving sections of this Act which are of importance for purposes of this work consist of Part IV., and of certain supplementary sections set out hereunder.

PART I.

PRELIMINARY.

1. This Act may be cited as the Municipal Corporations Act, 1882.

Short title.

2. This Act is divided into Parts, as follows :

Division of A into Part.

- Part I.—Preliminary.
- Part II.—Constitution and government of borough.
- Part III.—Preparations for and procedure at elections.
- Part IV.—Corrupt practices and election petitions.
- Part V.—Corporate property and liabilities.
- Part VI.—Charitable and other trusts and powers.
- Part VII.—Borough fund: borough rate: county rate.
- Part VIII.—Administration of justice.
- Part IX.—Police.
- Part X.—Freemen.
- Part XI.—Grant of charters.
- Part XII.—Legal proceedings.
- Part XIII.—General.

3. This Act shall not extend to Scotland or Ireland.

Extent.

4. [Commencement, 31st December, 1882.]

5. [Repeals.]

6. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporations Acts are . . . (a) extended by charter, but to no other place.

(a) The words "under this Act" which were formerly inserted here, were repealed by the L. G. A., 1933, ante, p. 735.

7.—(1) In this Act—

Interpretation and construction

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough :

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September one thousand eight hundred and thirty-five :

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act :

"Burgess" includes citizen :

"Corporate seal" means the common seal of a municipal corporation :

"Corporate office" means the office of mayor, alderman, councillor, elective auditor . . . (a) :

"Corporate land" means land belonging to or held in trust for a municipal corporation :

Section 7.

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

* * * * * * (b)

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

.

"Justice" means one of her Majesty's justices of the peace:

"Borough civil court" means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a county court:

"Schedule" means Schedule to this Act, and "Part" means Part of this Act:

.

(2) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4) The Schedules shall be read and have effect as if they were part of this Act.

(a) Revising assessors, who were also here originally included, were abolished by County Electors Act, 1888, s. 4.

(b) Definitions of "parish" and of "overseers" have been omitted as repealed by the L. G. A., 1933, *ante*, p. 735.

PART IV. (a).

CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

Definitions.

77. In this Part—

"Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections (b):

.

"Candidate" means a person elected, or having been nominated (c), or having declared himself a candidate for election, to a corporate office:

.

"Voter" means a burgess or a person who votes or claims to vote at a municipal election:

"Election court" means a court constituted under this Part for the trial of an election petition: **Section 77.**

"Municipal election petition" or "election petition" means a petition under this Part complaining of an undue municipal election.

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868: **31 & 32 Vict. c. 125.**

"Prescribed" means prescribed by general rules made under this Part:

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates (*d*).

(a) It is necessary to include this Part in the present Work, as by rules made by virtue of s. 40 of the L. G. A., 1933, *ante*, p. 774, it now applies to elections of urban district councillors and of rural district councillors. The rules made under this Act are set out, *ante*, p. 2524.

(b) See the definition of these offences, in the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, Sched. III., *post*, p. 4690.

(c) Although in fact disqualified for election (*Harford v. Lynskey*, [1899] 1 Q. B. 852; 63 J. P. 263; 33 Digest 67, 414). A person for whom a vote is given in an election of aldermen is not thereby "nominated" (*Cambridge C. C. Election Petition*, *Fordham v. Webber*, [1925] 2 K. B. 740; 89 J. P. 181; Digest Supp.).

(d) For the application of these definitions to elections of urban district councillors and of rural district councillors, see the Urban District Councillors Election Rules, *ante*, p. 2538, and the Rural District Councillors Election Rules, *ante*, p. 2558.

* * * * *

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election. **Avoidance of election for general corruption.**

* * * * *

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny (*a*). **Striking off votes.**

(a) As to the striking off of the votes of persons guilty of illegal practices or payments, see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 22, *post*, p. 4682.

86. . . . (*a*).

Personation.

(a) This section has been repealed by the L. G. A., 1933, s. 307, Sched. XI, Pt. II., and replaced by *ibid.*, s. 82 (1), *ante*, pp. 1194, 1274, 840.

Election Petitions.

87.—(1) A municipal election may be questioned by an election petition on the ground— **Power to question municipal election by petition.**

(a) That the election was as to the borough or ward wholly avoided by general bribery (*a*), treating (*b*), undue influence, or personation; or

(b) That the election was avoided by corrupt practices or offences against this Part committed at the election; or

(c) That the person whose election is questioned was at the time of the election disqualified (*c*); or

(d) That he was not duly elected by a majority of lawful votes (*d*).

(2) A municipal election shall not be questioned on any of those grounds except by an election petition (*e*).

(a) A single case of bribery avoids an election (*Norwich Case*, *Birkbeck v. Bullard* (1886), 54 L. T. 625; 20 Digest 87, 671). To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery (*Ipswich Case*, *Packard v. Collings* (1886), 54 L. T. 619; 20 Digest 78, 573).

(b) "Treating" is not the entertainment of equals by equals, but of an inferior by a superior with the object of securing the goodwill of the inferior (*Norwich Case*, *Birkbeck v. Bullard*, *supra*).

**Note to
Section 87.**

(c) At an election of councillors in a borough the returning officer does not decide upon the qualification of the candidate; that can only be done by petition under this section (*Pritchard v. Bangor Corporation* (1888), 13 App. Cas. 241; 52 J. P. 564; 20 Digest 123, 999). The disqualification here mentioned is one which existed at the time of the election. If a person becomes disqualified after election the proper remedy was formerly by *quo warranto* (*Howes v. Turner* (1876), 1 C. P. D. 670; 40 J. P. 680; see also *R. v. Beer*, [1903] 2 K. B. 693; 67 J. P. 326; 4 Digest 177, 1647); but see now L. G. A., 1933, s. 84, *ante*, p. 842.

(d) An election may also be questioned for illegal practices. See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 25, *post*, p. 4683. A petition may be presented under this section against some only of the persons returned, though the ground of the petition is one affecting the validity of the election as a whole; and the court can in such petition declare the persons so petitioned against not to have been duly elected (*Line v. Warren* (1885), 14 Q. B. D. 548; 49 J. P. 516; 20 Digest 184, 1597).

A petition presented under sub-s. (1) (d) involves a scrutiny. Where a returning officer improperly allowed an objection to a nomination, it was held that a petition would lie under this head for, if the nomination had not been rejected, the votes might have been differently given (*Budge v. Andrews* (1878), 3 C. P. D. 510; 20 Digest 126, 1011). And a writ of prohibition or *mandamus* does not lie for the purpose of determining whether a returning officer has wrongly and illegally rejected the nomination paper of a candidate for a municipal election. The proper mode of determining this question is by petition (*R. (O'Lehane) v. Dublin Town Clerk* (1909), 43 Ir. L. T. 169). If an elector having notice or knowledge of the disqualification of a candidate wilfully votes for him, his vote is thrown away, but knowledge of the fact which creates a legal disqualification does not involve knowledge that the candidate is legally disqualified. In the case of *Beresford-Hope v. Lady Sandhurst* (1889), 23 Q. B. D. 79; 53 J. P. 805; 20 Digest 132, 1057, it was held that votes given for a woman at a county council election prior to the passing of the Sex Disqualification (Removal) Act, 1919 (10 Halsbury's Statutes 79), were thrown away. Votes given in favour of a candidate before the voters have notice of any facts disqualifying him for election cannot be treated by the returning officer as thrown away, and unless notice of disqualification has been given the candidate who obtains the minority cannot on petition claim the seat (*Hobbs v. Morey*, [1904] 1 K. B. 74; 68 J. P. 132; 20 Digest 125, 1004). In *Boyce v. White* (1905), 92 L. T. 240; 53 W. R. 430; 20 Digest 125, 1006, the petitioner and respondent were the only candidates for the office of town councillor. Both were nominated, but the respondent at the time of his nomination was absent from the United Kingdom, and no written consent by him to such nomination given one month before such nomination was ever produced. The petitioner was not aware of this fact till the day of the poll, when it was too late to print and circulate in the constituency a notice of the objection to the respondent's nomination. The respondent was declared elected. On petition it was held that the court could only declare the election void and not that the petitioner was elected.

(e) Where this section applies there was no remedy by *quo warranto* even before s. 84 of the L. G. A., 1933, *ante*, p. 842 (*R. v. Morton*, [1892] 1 Q. B. 39; 56 J. P. 105; 20 Digest 138, 1129; and see *R. v. Miles, Ex parte Cole* (1895), 59 J. P. 407; 64 L. J. Q. B. 420; 20 Digest 182, 1589).

**Presentation of
petition.**

88.—(1) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election (a).

(2) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition (b).

(3) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer(c) shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4) It shall be presented within twenty-one days after the day on which the election was held(d), except that if it complains of the election on the ground of corrupt practices(e), and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

**Note to
Section 88.**

(a) If duly nominated a person may petition although in fact disqualified for election and nomination (*Harford v. Linskey*, ante, p. 4627).

(b) An unsuccessful candidate at an election cannot be made a respondent to a petition, although he coalesced for the purposes of the election with two successful candidates, so as to be responsible equally with them for any acts done by any of the three in furtherance of the common purpose (*Maidenhead Case*, *Lovering v. Dawson* (1875), L. R. 10 C. P. 726).

At a municipal election A. and B. were candidates for the office of councillor. A. obtained a majority of votes over B., and was declared elected, but refused to serve B. thereupon claimed to have been elected, and having made the necessary declaration acted on several occasions as councillor. A petition was presented against both A. and B., and both of them gave notice of their intention not to oppose the petition. No notice of A.'s disqualification was given to the electors. On an application by B. to the court that his name might be struck out of the petition, the court refused the application, holding that he was properly made a respondent (*Yates v. Leach* (1874), L. R. 9 C. P. 605; 38 J. P. 552; 20 Digest 183, 1594). As to making the returning officer a respondent, see *Harmon v. Park* (1880), 6 Q. B. D. 323; 45 J. P. 436; 20 Digest 183, 1596; *Wilson v. Ingham* (1895), 59 J. P. 614; 64 L. J. Q. B. 775; 20 Digest 139, 1140; *Cirencester Case* (1893), Day, 3.

(c) Prescribed here means prescribed by general rules made under this Part (s. 77, ante, p. 4626; s. 100, post, p. 4636); and see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 34, post, p. 4688.

(d) The premature presentation of a petition does not nullify the petition, but is an irregularity which is capable of being waived by the person raising the objection (*Re Grangemellon Election Petition*, [1909] 2 I. R. 90; 20 Digest 184, g).

(e) For the corresponding provision as to illegal practices, see the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 25, post, p. 4683. That section also provides that any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court, within the time within which a petition complaining of the election on the ground of that illegal practice can, under that section, be presented. The court cannot after the period of twenty-one days here mentioned allow an amendment which would practically amount to a new petition, as by adding a charge of treating (*Clark v. Lowley* (1883), 47 J. P. 551; 52 L. J. Q. B. 321; 20 Digest 185, 1604).

89.—(1) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent (a). Security for costs.

(2) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner (b), either by a deposit of money, or by recognizance entered into by not more than four sureties, or partly in one way and partly in the other.

(3) Within five days after the presentation of the petition the petitioner shall in the prescribed manner (b) serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.

(4) Within five days after service of the notice the respondent may object in writing to any recognizance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same.

(5) An objection to a recognizance shall be decided in the prescribed manner (c).

(6) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient.

(7) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

**Note to
Section 89.**

(a) The provisions of this section requiring security are imperative and absolute and apply equally whether the petitioner has or has not been admitted to take proceedings as a poor person under Order XVI., r. 22. R. S. C. (*Everett v. Griffiths* (No. 2), [1923] 1 K. B. 130; 87 J. P. 49; 20 Digest 184, 1599). As to appeal, see *Everett v. Griffiths* (No. 3), [1923] 1 K. B. 138; 87 J. P. 57; 20 Digest 186, 1620.

(b) See now (c) to s. 88, *ante*, p. 4629, and r. 26 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2528. Security need not be given for more than £500, although there are several respondents (*Pease v. Norwood, Hull Case* (1869), L. R. 4 C. P. 235; 33 J. P. 343; 20 Digest 155, 1284). By r. 36, *ibid.*, *ante*, p. 2529, the petitioner or his agent must file an affidavit of the time and manner of the service immediately after such service. The observance of these provisions as to service of the petition is a condition precedent to the trial of the petition (*Williams v. Tenby Corporation* (1879), 5 C. P. D. 135; 44 J. P. 348; 20 Digest 184, 1598).

(c) See note (c) to s. 88, *ante*, p. 4629. See also rr. 27—35 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2528.

**Petition at
issue.**

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

**Municipal
election list.**

91.—(1) The prescribed officer (a) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner (b).

(2) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purpose of this Part the petition shall be deemed to be a separate petition against each respondent (c).

(4) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

(a) See note (c) to s. 88, *ante*, p. 4629. As to inspection, see r. 39 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2529.

(b) See *Line v. Warren*, *ante*, p. 4628.

**Constitution of
election court.**

92.—(1) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2) A barrister shall not be qualified to constitute an election court if he is of less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of her Majesty's judges on which he practices as a barrister.

(4) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions . . . (a).

(5) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6) The election court shall for the purposes of the trial have the same

powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit (b). Section 92.

(a) See the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 36 (2), *post*, p. 4689.

(b) The election court is a court of record. See *R. v. Maidenhead Corporation, post*, p. 4637—8. Orders under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 28, *post*, p. 4685, cannot be varied under this sub-section. See sub-s. (7) of that section.

93.—(1) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial (a). Trial of election petitions.

(2) The place of trial shall be within the borough (b), except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3) The election court may in its discretion adjourn the trial from time to time (c), and from any one place to any other place within the borough or place where it is held.

(4) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows :

- (a) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence ;
- (b) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part ;
- (c) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof (c).

(6) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final (e).

(8) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the

Section 93. High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at nisi prius (f).

(9) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person (g).

(11) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

(a) See rr. 40—43 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2529.

(b) That is, the urban district not being a borough, or the rural district. Where the allegations of fact in a petition are not in dispute, but are specifically admitted by the respondent, so as to render it unnecessary at the trial to call witnesses from the district in which the election took place, the court may order the petition to be tried in London, on the ground that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the county or division where the election took place (*Arch v. Bentinck* (1887), 18 Q. B. D. 548; 20 Digest 163, 1353). The facts that a scrutiny is the only question to be tried, or that it would be less expensive to try elsewhere, are not "special circumstances" (*Cirencester Case*, *Lawson v. Chester-Master*, [1893] 1 Q. B. 245; 57 J. P. 806; 20 Digest 163, 1352; see also *Teukesbury Case*, *Collins v. Price* (1880), 5 C. P. D. 544; 20 Digest 162, 1350).

(c) See, however, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 27, *post*, p. 4684.

A formal adjournment is not necessary. See r. 45 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2529.

(d) The court must further report as to illegal practices in manner prescribed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 8 (2), *post*, p. 4674. As to the form of the report, see *Grant v. Pagham Overseers* (1877), 3 C. P. D. 80; 42 J. P. 88; 20 Digest 10, 37; and as to its exclusive effect, see cases cited in the note to Corrupt and Illegal Practices Prevention Act, 1883, s. 38, *post*, p. 4693.

(e) As to the mode of application, see r. 48 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2530. Notwithstanding this sub-section, appeal, if leave be given, lies from a judgment of the King's Bench Division to the Court of Appeal (*Line v. Warren*, *ante*, p. 4628; and see *Beresford-Hope v. Lady Sandhurst*, *ante*, p. 4628) followed in *Everett v. Griffiths* (No. 3), [1923] 1 K. B. 138; 87 J. P. 57; 20 Digest 186, 1620). If no leave be given no appeal lies (*Unwin v. McMullen*, [1891] 1 Q. B. 694; 55 J. P. 582; 20 Digest 186, 1619; *Pontefract Case*, *Shaw v. Reckitt*, [1893] 2 Q. B. 59; 57 J. P. 805; 20 Digest 157, 1294; *Everett v. Griffiths* (No. 3), *supra*).

If leave to appeal be refused by the High Court, possibly it may be given by the Court of Appeal under Judicature Acts, 1873—1925 (13, 8, 4, 12, 4, 8, 9, 13 Halsbury's Statutes 205, 301, 127, 509, 146, 367, 391, 209).

(f) See *Stepney Case*, *Isaacson v. Durant* (1886), 17 Q. B. D. 54; 4 O'M. & H. 34; Digest Supp.; *Thornbury Division, Gloucestershire Case*, *Ackers v. Howard* (1886), 4 O'M. & H. 65, on appeal 16 Q. B. D. 739; 50 J. P. 519; Digest Supp.; *Londonderry Case* (1886), 4 O'M. & H. 96, at p. 103; *Pembroke Election Petition*, [1908] 2 I. R. 433; 20 Digest 115, 915 vii.

(g) In this case the respondent must deliver to the Master six days before the day appointed for trial, a list of the objections to the election upon which he intends to rely,

and the Master is to allow inspection and office copies of such list to all parties concerned; and no evidence is to be given by the respondent of any objection not specified in the list, except by leave of the High Court. See r. 8 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2526

**Note to
Section 93.**

94.—(1) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial *à nisi prius*, and . . . (a). Witnesses.

(2) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them (b).

(9) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

(a) See also r. 54 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2530. The concluding words of the sub-section were repealed by the Perjury Act, 1911 (4 Halsbury's Statutes 772).

(b) Sub-sections (5)—(8), inclusive, of this section were repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 38.

95.—(1) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place (a). Withdrawal
of petition.

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

(a) See further as to the withdrawal of a petition, the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 26, *post*, p. 4684.

**Note to
Section 95.**

The form of notice of application to withdraw a petition is prescribed by r. 58 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2531. The notice of application is to be left at the Master's office, and copies are to be served on the respondent and on the town clerk or clerk of the council, as the case may be, and published in the county or borough to which the petition relates. See rr. 59, 60, of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2531.

The petitioners, who had presented a petition and subsequently found out their agent's report upon which the petition was based was untrustworthy, were allowed by the court to withdraw the petition, the Treasury having ascertained by special inquiry that there was no reliable evidence to support it, and having received from the petitioners copies of the reports and details of the subsequent inquiries. On a motion for leave to withdraw a petition, the court has a discretion as to the costs of the parties, and may order them to be paid by the petitioners on the higher scale, and taxed as between solicitor and client. They cannot give costs to the Public Prosecutor (*Devonport Case, Pascoe v. Puleston* (1886), 50 J. P. 134; 54 L. T. 733; 20 Digest 174, 1492).

After a municipal election a petition was presented by an unsuccessful candidate, claiming that he was returned by a majority of lawful votes. The mayor, to save expense, induced the petitioner and the returned candidate to submit the question to the arbitration of the town clerk, who was to recount the votes. On the award being against the petitioner, he asked leave to withdraw the petition, and the court allowed him to do so on payment of the costs, the Public Prosecutor not opposing (*Hythe (Borough) Municipal Election, Re, Mallam v. Bean* (1887), 51 J. P. 231; 3 T. L. R. 516; 20 Digest 187, 1621). See also *Lichfield Case* (1892), 9 T. L. R. 92; and *Halifax Case, Arnold v. Shaw* (1893), 9 T. L. R. 563.

**Abatement
of petition.**

96.—(1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly (a).

(4) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition (b).

(a) As to the notice, see rr. 63, 64 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2532.

(b) See s. 89, *ante*, p. 4629.

**Withdrawal and
substitution of
respondents.**

97.—(1) If before the trial of an election petition a respondent other than a returning officer—

(a) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b) Gives the prescribed notice that he does not intend to oppose the petition;

the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three (a).

(2) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

(a) See rr. 64—67 of the rules made under s. 100, *post*, p. 4636, and set out, *ante* p. 2532, relating to the prescribed notice, time, etc. The returning officer may be a respondent if the petition complains of his conduct.

A respondent may cease to hold office through disqualification. The name of a respondent will not be struck out of a petition merely because he has given the prescribed notice under this section. See *Yates v. Leach, ante*, p. 4629.

**Note to
Section 97.**

98.—(1) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part of either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of petitioner or respondent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful (*a*). Costs on election petitions.

(2) The costs may be taxed in the prescribed manner but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed (*b*).

(3) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the prescribed officer shall thereon certify the recognizance to be forfeited, and it shall be dealt with as a forfeited recognizance relating to a parliamentary election petition (*c*).

(*a*) An overloaded petition will be visited with costs, even if it is successful (*Norwich Case, Birkbeck v. Bullard* (1886), 54 L. T. 625; 20 Digest 87, 671). When a petition is wholly unfounded the court may order the petitioner to pay the costs of the Public Prosecutor (*Lambeth, Kennington Division Case, Crossman v. Davis* (1886), 54 L. T. 628; 20 Digest 117, 944). In certain cases the parties may be ordered to pay the expenses of the election court. See s. 101, *post*, p. 4637.

The barrister appointed to try the petition has an absolute discretion over the costs. In a case where the petitioners had improperly made an unsuccessful candidate a respondent, it was held that they could not object that he was not a party to the petition so as to deprive the barrister of jurisdiction to make an order upon them for his costs (*Maidenhead Case, Lovering v. Dawson* (1875), L. R. 10 C. P. 726).

As to the costs on withdrawal of a petition, see *Devonport Case, Pascoe v. Puleston, ante*, p. 4634.

A mistake occurred in the counting of votes in a parish council election in which there were nineteen candidates of whom nine were declared to be duly elected. Two of the defeated presented a petition against the return of two of the successful candidates, and the returning officer and his deputy were joined as respondents to the petition. The petition was not opposed. By order, a recount was held and a special case stated for the decision of the High Court. The Court made a declaration that the petitioners were duly elected and ordered the deputy returning officer to pay £10 towards the cost of the petition and the subsequent proceedings (*Rainham Parish Council Case* (1919), 83 J. P. 267; 20 Digest 187, 1635).

(*b*) So much of this sub-section as relates to the principles of taxation was repealed by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, Sched. II. See now s. 29 (3) of that Act, *post*, p. 4687. As to the mode of taxation and recovery of the cost, see r. 68 of the rules made under s. 100, *post*, p. 4636, and set out, *ante*, p. 2532, and *Pare v. Hartshorne* (1875), 31 L. T. 486; 23 W. R. 138.

(*c*) The prescribed officer is the Master. See r. 1 of the rules made under s. 100, *post*, p. 4636, and set out *ante*, p. 2524. A forfeited recognizance relating to a parliamentary election petition is dealt with in manner provided by the Parliamentary Elections Act, 1868, s. 42 (7 Halsbury's Statutes 421).

99.—(1) The town clerk (*a*) shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate. Reception of and attendance on the election court.

Section 99.

(2) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3) The election court may employ officers and clerks as prescribed.

(4) A shorthand writer (b) shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

(a) That is, the clerk to the urban district council, or the clerk to the rural district council. See *ante*, pp. 2539—40, 2559—60.

(b) See r. 52 of the rules made under s. 100, *infra*, and set out, *ante*, p. 2530.

Rules of
procedure and
jurisdiction.

100.—(1) The judges for the time being on the rota for the trial of parliamentary election petitions may from time to time make, revoke, and alter general rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (a).

(2) All such rules shall be laid before both Houses of Parliament within three weeks after they are made if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction (b).

(5) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

(a) And see also Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 30, *post*, p. 4687. The rules now in force are set out, *ante*, at pp. 2524 *et seq.*

(b) The High Court has no power to entertain an appeal against the decision of a commissioner appointed to inquire into alleged corrupt or illegal practices at an election except on points of law reserved for its decision by way of a case stated by the commissioner (*Ex parte Ayres* (1886), 54 L. T. 296). A petition against the election of members of a local board alleged undue influence by the respondents and their agents, and that corrupt and illegal practices extensively prevailed. The commissioner reported to the High Court that no corrupt practice had been proved against the respondents or otherwise, that illegal practices extensively prevailed, and that the respondents had been guilty of illegal practices; and he certified that the respondents had not been duly

elected. On a motion for a new trial or a prohibition, on the ground that the commissioner had exceeded his jurisdiction, it was held that the report was not in excess of the jurisdiction. *Quære*, whether the court has jurisdiction to entertain an appeal from a commissioner. *Per* STEPHEN, J.: The jurisdiction, if any, ought only to be exercised under extraordinary circumstances, and when necessary that justice should be done (*Goole Election Petition, Marsland v. Hickman* (1886), 2 T. L. R. 398; 20 Digest 182, 1591). See also *Preece v. Harding*, *post*, p. 4693; *Pontefract Case, Shaw v. Reckitt*, *ante*, p. 4632; *Pembroke Election Petition*, [1908] 2 I. R. 433; 20 Digest 182, q.

Note to
Section 100.

101.—(1) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate (a). Expenses of
election court.

(2) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk (b) for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

- (a) When in the opinion of the election court a petition is frivolous and vexatious by the petitioner;
- (b) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied (c).

(a) The expenses will be now paid out of the general rate or general rate fund in cases of petitions against the election of a member of a borough council or of an urban district council or of a rural district council (L. G. A., 1933, *ante*, p. 735. See *ante*, pp. 2539—40, 2559—60.

(b) See note (a) to s. 99, *ante*, p. 4636.

(c) Upon the trial of a petition against the return of a borough councillor under the Corrupt Practices (Municipal Elections) Act, 1872, the barrister in delivering judgment said that he found the councillor guilty of personal bribery, and that all the costs of the inquiry were to be borne by him, and made an order in writing for the payment by the councillor of certain costs under s. 19 of that Act. The written order made no provision for the remuneration and allowances to the barrister and other persons under s. 22 (corresponding to the text). The Treasury paid the amount of such remuneration and allowances, and certified the payment to the borough treasurer, and required him to repay them the amount out of the borough fund. A rate was accordingly made and levied. The Treasury afterwards, on receiving from the barrister a letter that he had always intended to visit all the costs upon the councillor, and had said so in giving judgment, cancelled their certificate, and the borough corporation abandoned the rate and returned the sums levied to the ratepayers. Afterwards the Treasury, finding that the barrister had made no written order for the payment of remuneration and allowances, issued a fresh certificate requiring the borough treasurer to pay them the amount out of the borough fund or rates. These facts being found upon a return to a *mandamus* commanding the treasurer to repay the Treasury, it was held that no valid order had been made by the barrister for the payment of the remuneration and allowances by the councillor; that the election court was a court of record, and that neither the High Court nor the Court of Appeal on the return could amend the order so as to make it include such payment; that the act of the Treasury in certifying was not a judicial act, and that they had the power to make a second certificate, and were entitled to a peremptory *mandamus* compelling the treasurer to repay to them the amount of such remuneration and allowances out of the borough fund or rates, and compelling the

Note to Section 101. corporation to order such amount to be levied by a borough rate (*R. v. Maidenhead Corporation* (1882), 9 Q. B. D. 494; 46 J. P. 724; 20 Digest 181, 1586).

Acts done
pending a
petition not
invalidated.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

Provisions as to
elections in the
room of persons
unseated on
petition.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (*a*); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

(*a*) In the case of urban district councils or of rural district councils there must be a new election. See *ante*, pp. 2539, 2559.

104. [*This section has been repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. II., and replaced by ibid., Sched. II., Pt. III., para. 53, ante, pp. 1194, 1274, 1226.*]

PART V.

CORPORATE PROPERTY AND LIABILITIES.

* * * * *

*Borough
Bridges.*

Borough Bridges.

Maintenance
of borough
bridges.

119(a).—(1) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council (*b*).

(2) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge (*c*), but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3) . . . (*d*).

(*a*) This section ceased to have effect as from April 1st, 1930, as respects any bridge which carries a county road (s. 29 (4), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903). As to what are county roads, see s. 29 (1), *ibid.*, and notes thereto, Vol. V. and 10 Halsbury's Statutes 903. Bridges carrying county roads are within the definition of "county roads" in that Act and are therefore maintainable by the county council unless "claimed" under s. 32, *ibid.*, Vol. V. and 10 Halsbury's Statutes 906.

(*b*) Such a bridge was a street within the definition contained in s. 4 of the P. H. A., 1875, *ante*, p. 4336, and is, *a fortiori*, a street within the definition in the P. H. A., 1936, s. 343 (1), *ante*, p. 713.

(*c*) Transferred to county councils by s. 3 (viii) of the L. G. A., 1888, *post*, p. 4722, and see the Highways and Bridges Act, 1891, *post*, p. 4833.

(*d*) Sub-ss. (3) and (4) were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. II., and replaced by *ibid.*, s. 185, *ante*, pp. 1194, 1274, 1013.

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PART VI.

Section 136.

CHARITABLE AND OTHER TRUSTS AND POWERS.

* * * * *

*Local Acts.**Local Acts.*

136.—(1) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

Transfer of powers of local authorities to municipal corporations.

(2) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom (a).

(a) See also s. 132 of the L. G. A., 1933, *ante*, p. 924.

137.—(1) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorised to be levied for lighting.

Power for council to extend local lighting Act.

(2) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough (a).

(a) See ss. 161—163 of the P. H. A., 1875, *ante*, p. 4445—4451.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature (a), if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be

Exercise of powers under local Acts.

5 & 6 WILL. 4, c. 76.

Section 133. continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

(a) *E.g.*, the regulation of the fees of a local Court of Requests (*Palmer v. Powell* (1840), 6 M. & W. 627 ; 33 Digest 56, 341).

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PART XIII.

GENERAL.

* * * * *

Time.

Computation of time.

Time.

230.—(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day ; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time (a).

(a) See the L. G. A., 1933, s. 295, Sched. II., Pt. I., para. 12, *ante*, pp. 1179, 1208.

Distance.

Measurement of distances.

Distance.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey (a).

(a) See the Interpretation Act, 1889, s. 34 (18 Halsbury's Statutes 1004) ; and see *Wright v. Wallasey L. B.*, *ante*, p. 4214.

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Forms.

Forms in Schedule.

Forms.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

* * * * *

Substitution in former Acts.

Provision for references in unrevoked enactments to 5 & 6 Will. 4, c. 76, etc.

Substitution in former Acts.

242.—(1) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provisions of the Municipal Corporations Act, 1835, in that part mentioned in connection therewith, such provision of this Act as is also mentioned in connection therewith.

(3) Where any Act passed before this Act, and not specified in the First Section 242. or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

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THE EIGHTH SCHEDULE.

FORMS (a).

* * * * *

(a) See s. 240, *ante*, p. 4640.

PART IV.

Forms relating to Borough Bridges (a).

FORM P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.
(Borough Bridges.)

Borough of Mortgage No.
We, the mayor, aldermen, and burgesses of the borough of . . . by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of . . . paid to us by A. B. of . . . for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of . . . doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said A. B., his executors, administrators, and assigns, from the day of the date hereof, until the said sum of . . . with interest at the rate of . . . per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the . . . day of . . . at [place of payment].

In witness whereof, etc., this . . . day of . . . , 187 . . .

(Corporate Seal.)

(a) See s. 119, *ante*, p. 4638.

FORM Q.

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.
(Borough Bridges.)

Borough of Transfer No. Mortgage No.
I A. B. of . . . , in consideration of the sum of . . . paid to me by C. D. of . . . , do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage, dated this . . . day of . . . , and made by the mayor, aldermen, and burgesses of the borough of . . . , under the above-mentioned Act, for securing the sum of . . . and interest thereon at . . . per centum per annum [or, if the transfer is by indorsement on the mortgage, insert instead of the words immediately following the word "assigns," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, etc., this . . . day of . . . , 187 . . .

A. B. (L.S.)

Sched. IX.

THE NINTH SCHEDULE.

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED (a).

PART I.

General References.

- 9 & 10 Vict. c. 74.—The Baths and Washhouses Act, 1846 (section 1) (b).
 20 & 21 Vict. c. 81.—The Burial Act, 1857 (c).
 26 & 27 Vict. c. 13.—The Town Gardens Protection Act, 1863 (d).
 33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A.) (e).
 34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2) (f).
 35 & 36 Vict. c. 91.—The Borough Funds Act, 1872 (g).
 38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4) (h).
 38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 34) (i).
 39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37) (k).
 41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38) (l).

PART II.

Particular References.

- 14 & 15 Vict. c. 55.—The Criminal Justice Administration Act, 1851 :
 In section 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.
 33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870 :
 In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.
 (a) See s. 242, *ante*, p. 4640.
 (b) (13 Halsbury's Statutes 520). Now repealed.
 (c) *Ante*, p. 4247.
 (d) *Ante*, p. 4254.
 (e) *Ante*, p. 4303.
 (f) Now repealed. See Vol. V., *post*.
 (g) (10 Halsbury's Statutes 559). Now repealed.
 (h) *Ante*, p. 4331.
 (i) *Ante*, p. 4541.
 (k) *Ante*, p. 4580.
 (l) *Ante*, p. 4613.

THE ELECTRIC LIGHTING ACT, 1882.

(45 & 46 VICT. c. 56) (a).

An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland. [18th August, 1882.]

Short title.

1. This Act may be cited for all purposes as "The Electric Lighting Act, 1882."

**Note to
Section 1.**

(a) This Act is included in this Appendix, as it confers important powers upon urban and rural district councils. It and two amending Acts of 1888, *post*, p. 4700, and 1909, *post*, p. 5096, constitute "The Electric Lighting Acts, 1888 to 1909"; they are supplemented by the Electric Lighting Clauses Act, 1899, *post*, p. 4949. Important amendments in the law as to the supply of electricity have been made by the Electricity (Supply) Act, 1919, *post*, p. 5243; the Electricity (Supply) Act, 1922, Vol. V., *post*; the Electricity (Supply) Act, 1926, Vol. V., *post*; the Electricity (Supply) Act, 1928, Vol. V., *post*; the Electricity (Supply) Act, 1933, Vol. V., *post*; the Electricity (Supply) Act, 1935, Vol. V. and 28 Halsbury's Statutes 51; and the Electricity Supply (Meters) Act, 1936, Vol. V. and 29 Halsbury's Statutes 133.

By s. 39 of the 1919 Act, *post*, p. 5265, and the Ministry of Transport (Electricity Supply) Order, 1920, all the powers and duties of the Board of Trade under the said Act of 1919 or the Electric Lighting Acts, or the orders and regulations made thereunder, or any local Act relating to the supply of electricity, or any enactment relating to matters incidental to such supply have been transferred to the Minister of Transport. By s. 1 of that Act, *post*, p. 5243, provision was made for the appointment of Electricity Commissioners for promoting, regulating, and supervising the supply of electricity. Power was given to the Electricity Commissioners to provisionally determine that separate electricity districts shall be formed, and to approve or make schemes for the improvement of the existing organisation for the supply of electricity in such districts and the establishment of joint electricity authorities, but in effect these objects could only be fulfilled upon the agreement of the parties concerned. By the Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 792, a Central Electricity Board is set up and invested with the direction of the generation of energy and responsibility for a network of main transmission lines interconnecting the large generating stations from which the whole supply of the country is ultimately to be produced. All energy produced will eventually belong to the Board who will arrange for its distribution in the most economical manner. The probable result of the Act will be that no more orders will be made authorising the establishment of further undertakings except in accordance with the provisions of the Act or schemes made thereunder. Important amendments of the Electric Lighting Acts are also made. An endeavour has been made to draw attention to all these alterations in the law in the notes to the various sections of the existing Acts, the provisions of which are affected by such alterations.

By s. 40 of the Electricity (Supply) Act, 1919, *post*, p. 5265, the Electric Lighting Acts, 1882 to 1909, and the Act of 1919, may be cited together as the Electricity (Supply) Acts, 1882 to 1919, and those Acts and the Supply Acts of 1922, Vol. V., *post*, 1926 and 1928, Vol. V. and 7 Halsbury's Statutes 792, 826, are to be construed together as one Act and may be cited as the Electricity (Supply) Acts, 1882 to 1928 (s. 2, Electricity (Supply) Act, 1928). Special orders under the Electricity (Supply) Acts may be granted to statutory gas companies by the Electricity Commissioners (Statutory Gas Companies) (Electricity Supply Powers) Act, 1925, Vol. V., *post*), or by the Minister of Transport (s. 49, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821).

2. The provisions of this Act shall apply to every local authority (a), Application of Act. company, or person who may by this Act or any licence or Provisional Order (b) granted under this Act, or by any special Act to be hereafter passed, be authorised to supply electricity within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act; and every such licence, Provisional Order, and special Act, is in this Act included in the expression "licence, Order, or special Act."

(a) See the definition of this term in s. 31, *post*, p. 4658. It includes urban and rural sanitary authorities. Licences are practically obsolete. It became usual to apply for a Provisional Order under s. 4, *post*, p. 4645, but see now the next note.

(b) Anything which could be effected by a Provisional Order may now be effected by a Special Order or (in the case of a joint electricity authority) by an order, and references in this Act to provisional orders now include references to such a special order or order except as regards paragraphs (1) to (4) of s. 4 (see s. 26 of the Electricity (Supply) Act, 1919, *post*, p. 5260).

3. The Board of Trade (a) may from time to time license any local authority as defined by this Act (b), or any company or person, to supply electricity under this Act for any public or private purposes (c) within any area (d), subject to the following provisions: Granting of licences authorising the supply of electricity.

Section 3.

- (1) The consent of every local authority (*b*) having jurisdiction within the area or any part of the area within which a supply is licensed to be furnished shall be required to the application for a licence, which consent such local authority is hereby authorised to give, with such conditions (if any) as, subject to the approval of the Board of Trade (*a*), the local authority may prescribe :
- (2) A licence shall be for any period not exceeding seven years, but may, at or after the expiration of such licence, be renewed from time to time for a like period with such consent as above mentioned upon such terms and conditions as the Board of Trade (*a*) may determine :
- (3) "Public purposes" shall mean lighting any street or any place belonging to or subject to the control of the local authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied :
- (4) "Private purposes" shall include any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any telegram (*e*) :
- (5) Every local authority, company, or person applying for a licence shall publish notice of their application by public advertisement in such manner and including such particulars as the Board of Trade (*a*) may from time to time direct or approve (*f*) ; and such licence shall not be granted by the Board of Trade (*a*) . . . (*g*) until opportunity has been given to all parties interested to make representations or objections to the Board of Trade (*a*) with reference to the application :
- (6) No application for a licence shall be made by any local authority except in pursuance of a resolution to be passed at a special meeting of the local authority, and such special meeting shall only be held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given (*h*) :
- (7) A licence may, subject to the provisions of this Act, be granted to a local authority authorising them to supply electricity within any area although the same or some part thereof may not be included within their own district :
- (8) The licence may make such regulations as to the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive, and for enforcing the performance by the licensees of their duties in relation to such supply, and for the revocation of the licence where the licensees fail to perform such duties, and generally may contain such regulations and conditions as the Board of Trade (*a*) may think expedient : (*i*)
- (9) Where in any area or part of an area in which any undertakers are authorised to supply electricity under any licence the undertakers are not themselves the local authority, the licence may contain any provisions and restrictions for enabling the local authority within whose jurisdiction such area or part of an area may be to exercise any of the powers of the undertakers under this Act with respect to the breaking up of any street repairable by such local authority within such area or part of an area (*k*), and the alteration of the position of any pipes or wires being under such street (*l*), and not being the pipes or wires of the undertakers, on behalf and at the expense of the undertakers, and for limiting the powers and

liabilities of the undertakers in relation thereto, which the Board of Trade (a) may think expedient (m). Section 3.

- (a) Now Ministry of Transport, see note (a) to s. 1, *ante*, p. 4643.
 (b) See note (a) to s. 2, *ante*, p. 4643.
 (c) This phrase is explained by sub-ss. (3), (4). See also *Att.-Gen. v. Southport Corpn.*, [1923] 1 Ch. 548; 87 J. P. 117; in H. L., affirmed *sub nom. Southport Corpn. v. Att.-Gen.*, [1925] A. C. 909; 88 J. P. 181; 20 Digest 199, 12.
 (d) See *Newcastle-upon-Tyne Electric Supply Co., Ltd. v. Newcastle-upon-Tyne Corporation* (1910), 75 J. P. 97; 9 L. G. R. 161; 20 Digest 216, 100.
 (e) Defined in s. 32, *post*, p. 4658.
 (f) See the Rules as to special orders made by the Electricity Commissioners, *ante*, p. 2696.
 (g) The words "until after the expiration of a period of three months from the date of the first publication of such advertisement nor" were repealed by s. 50 and Sched. VI. of the Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821, 825.
 (h) A special meeting of the council of a borough is called pursuant to the L. G. A., 1933, Sched. III., Pt. II., *ante*, p. 1234; of an urban district council and of a rural district council pursuant to the L. G. A., 1933, Sched. III., Pt. III., *ante*, p. 1236.
 (i) See *R. v. Electricity Commissioners*, [1924] 1 K. B. 171; 88 J. P. 13; 20 Digest 197, 1.
 (k) See s. 12, *post*, p. 4650.
 (l) See s. 15, *post*, p. 4652.
 (m) See also the Electric Lighting Clauses Act, 1899, Sched., clause 16, *post*, p. 4958.

4. The Board of Trade (a) may, from time to time, by Provisional Order (b) Granting of Provisional Orders authorising the supply of electricity. authorise any local authority (c), company, or person to supply electricity (d) for any public or private purposes (e) within any area (f) *without requiring such consents as are required to the granting a licence under this Act* (g), and for such period, whether limited or unlimited, as the Board of Trade (a) may think proper, but in all other respects subject to the like provisions as in the last section contained with respect to licences, and subject also to the following provisions:

- (1) No Provisional Order (b) shall authorise the supply of electricity by any undertakers within the district of any local authority (not being themselves the undertakers), unless notice that such Provisional Order (b) has been or is intended to be applied for has been given to such local authority by the applicants in such manner as the Board of Trade (a) may direct or approve on or before the first day of July in the year in which such application is made (h);
- (2) The Board of Trade (a) may submit to Parliament for confirmation any Provisional Order (b) granted by it in pursuance of this Act, but any such Order shall be of no force unless and until it is confirmed by Act of Parliament:
- (3) If, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to such Order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills:
- (4) Any Act confirming any Provisional Order (b) granted in pursuance of this Act may, on the application of the undertakers thereby authorised to supply electricity, be repealed, altered, or amended by any subsequent Provisional Order (b) granted by the Board of Trade (a) and confirmed by Parliament.

- (a) See note (a) to s. 1, *ante*, p. 4643.
 (b) See note (b) to s. 2, *ante*, p. 4643.
 (c) Two or more authorities may be empowered to supply jointly in certain cases: see s. 8 of the Electric Lighting Act, 1909, *post*, p. 510'. And see now the Electricity (Supply) Act, 1919, *post*, p. 5243, under which joint electricity authorities may be set up. See also s. 19 of the last-mentioned Act as to the power of authorised undertakers to render mutual assistance to one another.

**Note to
Section 4.**

(d) This does not include the supply of lamps and fittings (*Leicester Corporation v. Hill* (1898), 62 J. P. 232, and see also *Att.-Gen. v. Ilford U. D. C.* (1915), 13 L. G. R. 441; 20 Digest 199, 8). But some special Acts do authorise the supply of lamps and fittings. (See *Attorney-General v. Liverpool Corporation*, [1922] 1 Ch. 211; 20 Digest 199, 11). And see now s. 23 of the Electricity (Supply) Act, 1919, *post*, p. 5259. Under s. 48, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 819, local authorities authorised by special Act or Order to supply electricity may sell and instal lines, fittings and appliances. See also note (b) to s. 10, *post*, p. 4648.

(e) See definition in s. 3, *ante*, p. 4644. As to authority to supply electricity in bulk, see s. 4 of the Electric Lighting Act, 1909, *post*, p. 5097.

(f) The usual prohibition contained in Provisional Orders against the undertakers supplying electrical energy or erecting or laying down any lines or works beyond their statutory areas of supply was of universal application so that they could be restrained by injunction from carrying on business and supplying energy in any other place whatsoever however far removed from the statutory area of supply, and although such business be carried on and supply furnished quite independently of any special statutory powers (*Att.-Gen. v. Metropolitan Electric Supply Co.*, [1905] 1 Ch. 757; 69 J. P. 169; 20 Digest 206, 41). But see ss. 4, 5, 6 of the Electric Lighting Act, 1909, *post*, p. 5097, authorising in certain cases a supply outside the area; and see now the power which a joint electricity authority may obtain under s. 12 of the Electricity (Supply) Act, 1919, *post*, p. 5248.

Undertakings authorised since 1909 are protected from competition by unauthorised undertakers by s. 23 of the Electric Lighting Act, 1909, *post*, p. 5103. See also *Newcastle-upon-Tyne Electric Supply Co., Ltd. v. Newcastle-upon-Tyne* (1910) 75 J. P. 97; 9 L. G. R. 161; 20 Digest 216, 100; but see now s. 25 of the Electricity (Supply) Act, 1922, Vol. V., *post*, giving to persons not being undertakers a power in some cases to supply electricity.

(g) These words were practically repealed by the Electric Lighting Act, 1888, s. 1, *post*, p. 4700, which provided that the consent of the local authority should be required save as therein provided, but reference should now be made to s. 12 of the Electricity (Supply) Act, 1919, *post*, p. 5248.

(h) But see now as to these "July notices," s. 9 of the Electric Lighting Act, 1909, *post*, p. 5100, which in some cases dispenses with the necessity for giving them.

Making of
rules as to
application,
etc. under Act.

5. The Board of Trade (a) may from time to time make, and when made may rescind, alter, or repeal rules in relation to the applications for licences or Provisional Orders, and to the payments to be made in respect thereof, and to the publication of notices and advertisements, and the manner in which and the time within which representations or objections with reference to any application are to be made, and to the holding of local inquiries in such cases as they may think it advisable, and to any other matters arising under this Act.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the next session of Parliament (b).

(a) See note (a) to s. 1, *ante*, p. 4643.

(b) The rules must provide for (*inter alia*) the notices required by s. 1 (3) of the Electric Lighting Act, 1909, *post*, p. 5096. For the current Rules of the Electricity Commissioners, see *ante*, p. 2696.

Regulations to
be inserted in
licences, etc.

6. The undertakers shall be subject to such regulations and conditions as may be inserted in any licence, Order, or special Act (a) affecting their undertaking with regard to the following matters:

- (a) The limits within which and the conditions under which a supply of electricity is to be compulsory or permissive;
- (b) The securing a regular and efficient supply of electricity;
- (c) The securing the safety of the public from personal injury, or from fire or otherwise.
- (d) The limitation of the prices to be charged in respect of the supply of electricity;

- (e) The authorising inspection and inquiry from time to time by the Board of Trade (b) and the local authority ;
- (f) The enforcement of the due performance of the duties of the undertakers in relation to the supply of electricity by the imposition of penalties (c) or otherwise, and the revocation of the licence, Order, or special Act where the undertakers have, in the opinion of the Board of Trade (b), practically failed to carry the powers granted to them into effect within a reasonable time, or discontinued the exercise of such powers ; and
- (g) Generally with regard to any other matters in connection with the undertakings.

Section 6.

Provided always, that the Board of Trade (b) may, from time to time, make such regulations as they may think expedient for securing the safety of the public from personal injury or from fire or otherwise (d), and may from time to time amend or repeal any regulations which may be contained in any such licence, Order, or special Act in relation thereto ; and any regulations so made or amended by the Board of Trade (b) shall, from and after the date thereof, have the like effect in every respect as though they had been originally inserted in the licence, Order, or special Act authorising the undertaking, and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal or any proceeding or remedy which might have been had in relation thereto.

Any local authority within any part of whose district electricity is authorised to be supplied under any licence, Order, or special Act, may, in addition to any regulations which may be made under the preceding provisions of this section for securing the safety of the public, from time to time make, rescind, alter, or repeal byelaws (e) for further securing such safety ; and there may be annexed to any breach of such byelaws such penalties to be recovered in a summary manner as they may think necessary : Provided always, that no such byelaws shall have any force or effect unless and until they have been confirmed by the Board of Trade (b) and published in such manner as the Board of Trade (b) may direct.

(a) The usual regulations and conditions on these matters formerly inserted at length are now collectively incorporated by the Electric Lighting Clauses Act, 1899, *post*, p. 4949, in every Provisional Order and special Act made or passed on or since October 1st, 1899 except so far as expressly varied or excepted thereby.

(b) See note (a) to s. 1, *ante*, p. 4643.

(c) By a local Act, a corporation were empowered to make agreements with regard to a supply of electrical energy to consumers and were liable to a penalty for default in supplying energy to any owner or occupier of premises to whom they might be and were required to supply energy under the Act. The plaintiffs, who were not entitled to require a supply under the Act, made an agreement with the corporation for the supply of electrical energy. It was held that an action would lie at the suit of the plaintiffs against the corporation to recover damages for an alleged breach of the agreement, there being no clear words in the statute confining the remedy of the plaintiffs to proceedings to recover the penalty under the section which rendered the corporation liable to such penalty (*Morris and Bastert, Ltd. v. Loughborough Corporation*, [1908] 1 K. B. 206; 71 J. P. 521 ; 20 Digest 204, 37).

(d) See these regulations, *ante*, p. 2669.

(e) These byelaws will not be subject to the provisions of the P. H. A., 1875, *ante*, p. 4467, as to byelaws. Byelaws made under Part II., ss. 13 *et seq.*, of the P. H. A., 1890, *post*, p. 4807, do not apply to the posts, wires, etc., of electrical undertakings. See s. 15 of that Act, *ante*, p. 4810, and s. 26, P. H. A., 1925, Vol. V., *post*, dealing with wires in connection with wireless installations.

7. Any expenses incurred by a local authority under this Act (a), and not otherwise provided for (b), including any expenses incurred in connection with the obtaining by them, or any opposition to the obtaining by any other local authority, company, or person, of any licence, Order, or special Act

Expenses of local authority.

Section 7. under this Act, . . . (c) where such local authority is a rural sanitary authority . . . (c) shall be deemed to be special expenses within the meaning of the Public Health Act, 1875 (d).

38 & 39 Vict.
c. 55.

(a) Expenses incurred by a local authority under an agreement with a joint electricity authority are deemed to be expenses incurred under the Electric Lighting Acts, and this and the next section are to apply accordingly (s. 32 of the Electricity (Supply) Act, 1919, *post*, p. 5261). See also the borrowing power conferred by s. 5 of the Electricity (Supply) Act, 1922, Vol. V. and 7 Halsbury's Statutes 780.

(b) See the P. H. A., 1875, s. 298, *ante*, p. 4508, and notes.

(c) Certain words here were repealed by the L. G. A., 1933; as to expenses, see Pt. VIII. of that Act, *ante*, pp. 1007 *et seq.*

(d) See s. 229 of that Act (13 Halsbury's Statutes 720), and s. 190 of the L. G. A. 1933, *ante*, p. 1016.

Power of local
authority to
borrow money.

8. A local authority authorised to supply electricity by any licence, Order, or special Act may from time to time borrow (a) money. . . .

(a) See note (a) to s. 7, *supra*. Money borrowed under the Electricity Supply Acts was not to be reckoned as part of the authority's total debt for the purpose of any limitation on borrowing powers: see s. 21 of the Electric Lighting Act, 1909, now repealed, and s. 5 (2) of the Electricity (Supply) Act, 1922, Vol. V., *post*, but by s. 74 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 931, all limitations on borrowing powers were removed. As to suspension of sinking fund payments in respect of new works, see s. 2 of the Electricity (Supply) Act, 1922, Vol. V., *post*. The borrowing powers conferred by this section are extended to cover agreements entered into with the Central Electricity Board by s. 16 of the 1926 Act, Vol. V. and 7 Halsbury's Statutes 805, and in the case of local authorities for the sale, etc., of fittings under s. 48, *ibid.*, Vol. V. and *op. cit.* 819.

Accounts.

9. The undertakers shall on or before the twenty-fifth day of March (a) in every year fill up an annual statement of accounts of the undertaking made up to the thirty-first day of December (a) then next preceding; and such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade (b).

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling a copy.

In case the undertakers make default in complying with the provisions of this section, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

(a) In the case of local authorities these dates are varied by s. 12 of the Electric Lighting Act, 1909, *post*, p. 5100, but see next note.

(b) The Board of Trade has now, for most of the purposes of this Act, been superseded by the Ministry of Transport, see note (a) to s. 1 on *ante*, p. 4643, but by s. 27 of the Electricity (Supply) Act, 1919, *post*, p. 5260, it is provided that (*inter alia*) authorised undertakers under the Act in the text shall furnish to the Electricity Commissioners at such times and in such form and manner as the Commissioners may direct such accounts, statistics, and returns as they may require for the purposes of their powers and duties under that Act.

General powers
of undertakers
under licence
or Provisional
Order.

10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade (a) in pursuance of this Act and of any licence, Order, or special Act authorising or affecting their undertaking, and for the purpose of supplying (b) electricity acquire such lands (c) by agreement (d), construct such works (e), acquire such licences for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply (f).

(a) See note (a) to s. 1, *ante*, p. 4643.

(b) A municipal corporation were the undertakers for the supply of electricity within their area, and purporting to exercise their statutory powers, supplied every description of electrical fittings and apparatus to consumers of electricity. It was held that the statutory powers of the undertakers ceased with the delivery of electricity at the

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Section 10.**

terminals, *i.e.*, the meter, on the consumers' premises, and were complete at that point, and that the general power to do "all such acts and things as were necessary and incidental to such supply" was limited to the generation and delivery of such supply; that the analogy of the supply of gas under the Gasworks Clauses Acts did not apply to the supply of electricity under the Electric Lighting Acts; and that the supply of electrical fittings and apparatus for the use of consumers was *ultra vires* the corporation (*Att.-Gen. v. Leicester Corporation*, [1910] 2 Ch. 359; 74 J. P. 385; 20 Digest 198, 5); followed in *A.-G. v. County of London Electric Supply Co., Ltd.*, [1926] Ch. 542; Digest Supp.; and *cf. Deuchar v. Gas Light and Coke Co.*, [1925] A. C. 691; 89 J. P. 177; 25 Digest 471, 10). In a case of a municipal corporation alleged to have in excess of their powers under the Electric Lighting Acts and a confirmed Provisional Order installed and repaired electric light fittings and wires within and without their area of supply on the consumers' sides of the terminals and also electric bell fittings and wires, the facts were held to have been brought within the judgment in *Att.-Gen. v. Leicester Corporation*, *supra*, where an injunction was granted, and that this would be followed unless the defendants (1) had power as a chartered corporation to carry on the business complained of, or (2) were so empowered by a private Act enabling them to supply mains but not manufacture things for cooking, heating, ventilating and motive power, and also to repair such things. It was held that the first point, not having been raised until the trial, was not open to the defendants, and that if it were, the impugned acts were continuous acts partly *intra vires* and partly *ultra vires* the corporate powers, and could not be dissected, and could not, therefore, be justified; also that the further powers under the Act were confined to the area of supply and to electric motors and apparatus used as sources of power for the specified purposes and did not extend to the objects to which the power was transmitted (*Att.-Gen. v. Sheffield Corporation* (1912), 76 J. P. 185; 106 L. T. 367; 20 Digest 199, 10). See also *Att.-Gen. v. Ilford U. D. C.* (1915), 13 L. G. R. 441; 20 Digest 199, 8. But see now s. 23 of the Electricity (Supply) Act, 1919, *post*, p. 5259, and *Att.-Gen. v. Liverpool Corporation*, [1922] 1 Ch. 211; 20 L. G. R. 547; 20 Digest 199, 11; and s. 48, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 819, which expressly authorises local authorities to sell, install, etc., fittings and appliances.

(c) As to purchase by local authority, see the Electric Lighting Clauses Act, 1899, Sched., clause 8, *post*, p. 4953; and see now also ss. 6, 8, 9, 13, and 32 of the Electricity (Supply) Act, 1919, *post*, pp. 5245, 5246, 5247, 5249, 5261. A local authority having acquired land for the purpose of erecting thereon works for generating electricity were restrained from using part of such land for the erection of a refuse destructor, although they proposed to use the surplus heat produced by the destruction of refuse in aid of their machinery for generating electricity (*Att.-Gen. v. Pontypridd U. D. C.*, [1906] 2 Ch. 257; 70 J. P. 394; 20 Digest 200, 13). The case is an illustration of the general principle that it is *ultra vires* for a local authority having acquired land for particular purposes under the powers of one statute to use the land so acquired or any part of it for another purpose, although such other purpose may be within the powers given to them under some other statute. And see the similar case of *Att.-Gen. v. Bradford Corporation* (1911), 75 J. P. 553; 55 Sol. J. 715; 26 Digest 292, 243. See, however, s. 95, P. H. A., 1907, *post*, p. 5065.

(d) Land for a generating station may now be acquired compulsorily. See s. 1 of the Electric Lighting Act, 1909, *post*, p. 5096. See also as to generating stations, ss. 9, 10, and 11 of the Electricity (Supply) Act, 1919, *post*, p. 5247, and ss. 5, 6 and 14, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 796, 797, 804.

(e) Defined by s. 32, *post*, p. 4658. But as to restrictions on the construction of generating stations, see ss. 1 and 2 of the Electric Lighting Act, 1909, *post*, p. 5096, and s. 11 of the Electricity (Supply) Act, 1919, *post*, p. 5247. And as to the power of the Central Electricity Board to close generating stations in certain events (s. 14, Electricity (Supply) Act, 1926, Vol. V., *post*).

(f) See note (b) to s. 10, *ante*, p. 4648. By s. 6 of the Telegraph Act, 1892 (19 Halsbury's Statutes 285), the undertakers may agree with the Postmaster-General for placing telegraphs in the trenches, tubes, or pipes used for the purpose of laying their own electric line. In the case of *In re St. Nicholas Cole Abbey, Re St. Benet Fink Churchyard*, [1893] P. 58; 20 Digest 202, 25, an electric lighting company obtained a faculty for constructing chambers for the storage and transformation of electricity under two disused churchyards in the city of London, and it was held that the vesting of one of such churchyards by local Acts in the corporation to the intent that it might for ever remain unbuilt upon and unused for any purpose, except such ornamental purpose as the bishop should approve, did not preclude the court from granting the faculty. As to sale of lamps and fittings, see note (d) to s. 4, *ante*, p. 4646. As to liability for nuisance, see s. 17 and notes, *post*, p. 4653. As to liability of contractors to the local authority, being the undertakers, see *Re Fulham Borough Council and National Electric Construction Co.* (1905), 70 J. P. 55; 4 L. G. R. 115; 20 Digest 213, 83.

Section 11.

Power for local authority to contract in certain cases and restrictions on assignments of powers, etc. of undertakers.

11. Any local authority who have obtained a licence, Order, or special Act for the supply of electricity, may contract with any company or person for the execution and maintenance of any works needed for the purposes of such supply, or for the supply of electricity within any area mentioned in such licence, Order, or special Act, or in any part of such area; but no local authority, company, or person shall by any contract or assignment transfer to any other company or person or divest themselves of any legal powers given to them, or any legal liabilities imposed on them by this Act, or by any licence, Order, or special Act, without the consent of the Board of Trade (a).

(a) The first part of the section deals with cases where the local authority remains the party supplying electricity, though it may contract for the execution of works or buy electricity from some other person or company. The second part, now repealed and replaced by a different provision in s. 14 of the Electric Lighting Act, 1909, *post*, p. 5101, as to which see now the provisions contained in the Electricity (Supply) Acts, 1919 and 1922, *post*, p. 5245 and Vol. V., *post*, dealt with cases of transfer by the local authority or some other company or person of the legal powers for supplying electricity. Where the effect of a contract between a local authority having statutory powers and a company was to place the company in the position of the authority as regards their statutory powers and duties without the consent of the Board of Trade, the contract was held void, notwithstanding a clause intended to prevent the contract from being as between the parties an assignment or transfer of the statutory powers of the authority (*Sudbury Corporation v. Empire Electric Light and Power Co.*, [1905] 2 Ch. 104; 69 J. P. 321; 20 Digest 198, 4). A collateral agreement containing terms of transfer not approved by the Board of Trade, but made a condition of the execution of a transfer deed approved by that Board, was held not *ultra vires* and enforceable (*Lambeth Borough Council v. South London Electric Supply Corporation, Ltd.* (1907), 71 J. P. 233; 96 L. T. 440; 20 Digest 218, 111, followed in *Southport Corporation v. Birkdale District Electric Supply Co., Ltd.*, [1925] Ch. 794; 89 J. P. 149; 20 Digest 208, 52, where, after an agreement had been made containing terms of transfer approved by the Board, a further agreement that the company to whom the transfer had been made would not charge higher prices than those charged in an adjoining borough was entered into without the approval of the Board. This latter agreement was held not *ultra vires* as being a business transaction into which the defendants might reasonably enter, 22 T. L. R. 78). See also *London Electric Supply Corporation, Ltd. v. Westminster Electric Supply Corporation, Ltd.* (1913), 11 L. G. R. 1046; 20 Digest 217, 110.

Incorporation of certain provisions of Clauses Consolidation Acts.

12. The provisions of the following Acts shall be incorporated with this Act; that is to say,

- (1) The Lands Clauses Acts (a), except the enactments with respect to the purchase and taking of lands otherwise than by agreement (b), and except the enactments with respect to the entry upon lands by the promoters of the undertaking; and
- (2) The provisions of the Gasworks Clauses Act, 1847 (c), with respect to breaking up streets (d) for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers; and
- (3) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871.

For the purposes of this Act, in the construction of all the enactments incorporated by this section, "the special Act" means this Act inclusive of any licence, Order, or special Act; and "the promoters" or "undertakers," and "the undertaking," as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Acts, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Act, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant electric line,

10 & 11 Vict.
c. 15.

34 & 35 Vict.
c. 41.

and "works" meant "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any licence, Order, or special Act. Section 12.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts (e).

(a) These Acts are Lands Clauses Consolidation Act, 1845, *ante*, p. 4104; Lands Clauses Consolidation Acts Amendment Act, 1860, *ante*, p. 4252; Lands Clauses Consolidation Act, 1889 (2 Halsbury's Statutes 1168); Lands Clauses (Umpire) Act, 1883, *post*, p. 4664.

The Act of 1869, which so far as still unrepealed relates only to lands in Westminster, is not included in this work.

(b) But see now s. 1 of the Electric Lighting Act, 1909, *post*, p. 5096, as to compulsory acquisition of land for generating stations.

(c) *Ante*, p. 4163, and see *Porter v. Ipswich Corporation*, [1922] 2 K. B. 145; 20 L. G. R. 502; 20 Digest 201, 20. See also the provisions in the Electric Lighting Act, 1888, s. 4, *post*, p. 4702, as to the restrictions on placing electric lines in, over, etc., streets.

(d) As to breaking up streets, railways, or tramways, outside the area of supply in order to connect with a generating station, see s. 3 of the Electric Lighting Act, 1909, *post*, p. 5097; cf. also *ibid.*, ss. 4, 6.

(e) That is to say, in manner provided by the S. J. A., 1879, ss. 6, 35 (11 Halsbury's Statutes 325, 342). See the note to s. 293 of the P. H. A., 1936, *ante*, p. 610.

13. Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf inserted in the licence, Order, or special Act, or with the written consent of the Board of Trade (a), and the Board of Trade (a) shall not in any case insert any such special powers in any licence or Provisional Order, or give any such consent until notice has been given to such authority, company, or person by advertisement or otherwise, as the Board of Trade (a) may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto (b).

Restriction on breaking up of private streets, railways and tramways.

(a) See note (a) to s. 1, *ante*, p. 4643.

(b) See the Electricity Commissioners Rules, *ante*, p. 2696, and the Electric Lighting Clauses Act, 1889, Sched., clause 21 (3), *post*, p. 4963, as to obtaining the consent of the Ministry of Transport as successor of the Board of Trade. In the case of *London Corporation v. County of London Electric Supply Co.*, [1910] 2 Ch. 208; 74 J. P. 268; 20 Digest 217, 108, the defendants proposed to connect up their areas of supply on the north and south sides of the Thames by laying electric mains along streets, including London Bridge, outside their areas of supply, in pursuance of the powers conferred upon them by the London Electric Supply Act, 1908. London Bridge is not a bridge repairable by the local authority, but is repairable by the corporation of the city of London as trustees of the Bridge House estates. The corporation sought an injunction to restrain the defendants from laying the proposed mains, and a declaration that the Act of 1908 did not entitle them to break up or carry the mains over London Bridge without the corporation's consent. It was held that the defendants had power, subject to the provisions of the Acts therein referred to, to lay electric mains over London Bridge, that is subject to the consent either of the corporation or, if that were refused, of the Board of Trade. In *Andrews v. Abertillery U. D. C.*, [1911] 2 Ch. 398; 75 J. P. 449; 20 Digest 201, 19, it was held (KENNEDY, L.J., *dissentiente*) that where there was no person by whom the street was repairable the section operated as an absolute prohibition against the breaking up of the street by the undertakers, and that therefore where a strip of land adjoining a street repairable by the local authority had been dedicated to the public by the owner and had become part of the street, but was not repairable either by the local authority or by the owner or by any other person, the local authority, as undertakers for the supply of electric light in their district, had no power to break up that portion of the

**Note to
Section 13.**

street. See also now s. 22 of the Electricity (Supply) Act, 1919, *post*, p. 5256, and s. 44, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 818, as to wayleaves.

**Restrictions as
to above-
ground works.**

14. Notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised to place any electric line above ground, along, over, or across any street, without the express consent of the local authority (*a*), and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to the provisions of this section, or may themselves remove the same, and recover the expenses of such removal from the undertakers in a summary manner; and where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if they are of opinion that such electric line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order directing and authorising the removal of such electric line by such person and upon such terms as they may think fit.

(*a*) Therefore the case of *Wandsworth Board of Works v. United Telephone Co.* will not apply to such wires. See also *National Telephone Co. v. Constables of St. Peter Port, Guernsey and Finchley Electric Light Co., Ltd. v. Finchley U. D. C.*, Times, October 17th, 1901. Further restrictions are contained in the Electric Lighting Act, 1888, s. 4, *post*, p. 4702, and the Electric Lighting Clauses Act, 1899, Sched., clauses 10 (*b*), *post*, p. 4954. However, by s. 21 of the Electricity (Supply) Act, 1919, *post*, p. 5255, as amended by s. 44, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 818, the consent of the Ministry of Transport (as successor to the Board of Trade) now suffices for the placing of any electric line above ground. Wires to which this Act applies are not subject to the P. H. A., 1890, ss. 13, 14, *post*, p. 4807. See s. 15 of that Act, *post*, p. 4810. As to London, see London Overhead Wires Act, 1891.

**Power to
undertakers to
alter position of
pipes and
wires.**

15. Subject to the provisions of this Act and of the licence, Order, or special Act authorising them to supply electricity, and to any byelaws made under this Act (*a*), the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under this Act, on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the undertakers and owners, or in case of difference as may be determined in manner prescribed by the licence or Provisional Order authorising the undertakers to supply electricity, or where no such manner is prescribed as may be determined by arbitration, and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local or other public authority, company, or person in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in this section contained with reference to the alteration of the position of any pipes or wires by the undertakers (*b*).

(*a*) See also the Electric Lighting Clauses Act, 1899, Sched., clause 17, *post*, p. 4959.

(*b*) The provisions of this section are overridden by s. 35, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 814, in so far as alterations of works crossing a county bridge are concerned.

**Clause for
protection of
canals.**

16. If at any time after the undertakers have placed any works under in, upon, over, along or across any canal (*a*), any person having power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin

or other work, and such canal; or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person, and on having reasonable facilities afforded them by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the direction in which the works are to be placed, it shall be determined by arbitration.

Section 16.

(a) See also as to protection of railway and canal companies the Electric Lighting (Clauses) Act, 1899, Sched., clause 19, *post*, p. 4962, and s. 22 of the Electricity (Supply) Act, 1919, *post*, p. 5256.

17. In the exercise of the powers in relation to the execution of works given them under this Act, or any licence, Order, or special Act, the undertakers shall cause as little detriment and inconvenience and do as little damage (a) as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration (b).

Compensation for damage.

(a) See s. 26, *post*, p. 4656, for the protection of the Postmaster-General, and ss. 5 (3), 22 of the Electric Lighting Act, 1909, *post*, pp. 5098, 5102, for the protection of certain public buildings.

(b) See s. 28, *post*, p. 4657.

A company authorised by private Act to supply a certain district with electric light committed a nuisance and damage to a public-house near their lighting station, by the withdrawal of support caused in digging foundations, and by vibration in working their engines:—*Held*, that “works” in s. 17, as defined by s. 32 of this Act, *post*, p. 4658, included only what was required to supply electricity and not the actual supply, and therefore, the case did not fall within s. 17; but the company were liable in damages at common law, and to be restrained by injunction (*Shelfer v. City of London Electric Lighting Co., Meux's Brewery, Ltd. v. City of London Electric Lighting Co.*, [1895] 1 Ch. 287; 20 Digest 209, 67). See also *National Telephone Co. v. Baker*, [1893] 2 Ch. 186; 57 J. P. 373; 20 Digest 211, 73; *Att.-Gen. v. Pall Mall Electric Lighting Co.*, Times, March 13th 1895; *Fowler v. Chelsea Electric Supply Co., Sandon v. Same*, Times, May 25th, 1895; *Holdsworth v. St. Pancras Vestry*, Times, April 18th, 1896; *Hawkes v. Leyton U. D. C.*, Times, November 30th, 1900; May 1st, 1901; *Morrow v. Stepney Corporation* (1921), 43 M. C. C. 33.

A serious annoyance to adjoining occupiers by vibration, noise, and smell, is not to be excused on the ground that it is temporary and occasional (*Knight v. Isle of Wight Electric Light and Power Co.* (1904), 68 J. P. 266; 73 L. J. Ch. 299; 20 Digest 210, 69). This is the case although the defendants are a local authority having under a Provisional Order a power to supply electricity (*Colwell v. St. Pancras Borough Council*, [1904] 1 Ch. 707; 68 J. P. 286; 20 Digest 210, 70). No special consideration is due to the fact that the complaint is made in respect of a place of worship, but the general character of the neighbourhood and all the surrounding circumstances must be considered, and an injunction will be refused unless there is a serious annoyance (*Heath v. Brighton Corporation* (1908), 72 J. P. 225; 20 Digest 209, 66). See also as to nuisance caused by fumes from a generating station (*Manchester Corporation v. Farnworth*, [1930] A. C. 171; 94 J. P. 62 (H.L.), upholding decision of C. A. at [1929] 1 K. B. 533; 93 J. P. 73; Digest Supp.).

18. The undertakers shall not be entitled to prescribe any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, and any licence, Order, or special Act, is used: Provided always that no local authority, company, or person shall be at liberty to use any form of lamp or burner or to use the electricity supplied to them for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply (a) of electricity supplied to any other local authority, company, or person by the undertakers (b), and if any dispute or difference arises between the undertakers, and any local authority, company, or person

Undertakers not to prescribe special form of lamp or burner.

Section 18. entitled to be supplied with electricity under this Act, or any licence, Order, or special Act, as to the matters aforesaid, such dispute or difference shall be determined by arbitration.

(a) See note (b) to s. 10, *ante*, p. 4648.

(b) See also the Electric Lighting (Clauses) Act, 1899, Sched., clause 27 (4), *post*, p. 4967.

Obligation on undertakers to supply electricity.

19. Where a supply of electricity is provided in any part of an area for private purposes, then except in so far as is otherwise provided by the terms of the licence, Order, or special Act authorising such supply, every company or person within that part of the area shall, on application, be entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply (a).

(a) No one is entitled to demand a supply of energy under this section unless and until he has made a contract with the undertakers for the supply. Thus a receiver for debenture-holders taking possession of a hotel for the lighting of which the company, who were proprietors, were in debt to an electric supply company, was held not to be entitled to a further supply, as he refused to pay the arrears which the electric supply company demanded payment of as a condition for continuing the light (*Husey v. London Electric Supply Corporation*, [1902] 1 Ch. 411; 20 Digest 205, 34).

See s. 23 (1) of the Electricity (Supply) Act, 1919, Vol. V., *post*, as to standby supplies of electricity; and see s. 18 of Electric Lighting Act, 1909, *post*, p. 5102, as to their right to refuse a supply to a person who is in their debt for electricity previously supplied.

In *Metropolitan Electric Supply Co., Ltd. v. Ginder*, [1901] 2 Ch. 799, at p. 811; 65 J. P. 519; 20 Digest 207, 47, it was held by BUCKLEY, J., that the words "a supply on the same terms" used in this section bear their natural meaning, and include price. In *Att.-Gen. for Victoria v. Melbourne Corporation*, [1907] A. C. 469, at p. 475; 20 Digest 207, c, the Privy Council approved this construction with regard to the same words as used in s. 38 of the Victorian Electric Lighting and Power Act, 1896, that section being practically identical with this. But s. 39 of that Act dealing with preference differs in its wording from s. 20 of this Act, *infra*, relating to the same subject. The Privy Council held that on the true construction of ss. 38 and 39 of the Victorian Act the corporation were authorised to supply electricity under two different systems of charge—one at a fixed rate and the other at a rate varying with the amount consumed, the system adopted being at the choice of the customer and no preference being given within each system to one consumer over another.

Charges for electricity.

20. The undertakers shall not, in making any agreements for a supply of electricity, show any undue preference to any local authority, company, or person, but save as aforesaid, they may make such charges for the supply of electricity as may be agreed upon, not exceeding the limits of price imposed by or in pursuance of the licence, Order, or special Act authorising them to supply electricity (a).

(a) See also the Electric Lighting (Clauses) Act, 1899, Sched., clauses 31–34, *post*, p. 4968, and the Electric Lighting Act, 1909, s. 17, *post*, p. 5102. A form of agreement is given in Key and Elphinstone's *Precedents in Conveyancing*, 8th ed.; but from the consumer's point of view the agreement should always contain a provision that no charge should be made in the pressure of the supply. A contract containing a clause that the consumer agrees to take the whole of the electric energy required for his premises from the company for a period of not less than five years at a fixed charge not exceeding the limit under this section, does not contravene this or the preceding section, and may be enforced by injunction (*Metropolitan Electric Supply Co., Ltd. v. Ginder*, [1901] 2 Ch. 799; 65 J. P. 519; 20 Digest 207, 47). Where undertakers issued a circular with reference to the price proposed to be charged for electricity to power consumers, the effect of which was in certain cases to make a lower charge for power purposes to consumers who in addition to a supply for power took exclusively a supply of electricity for lighting purposes, and a higher charge to consumers of electricity for power only or for power and partial lighting, it was held that the differentiation proposed by the circular was a breach of both ss. 19 and 20 (*Att.-Gen. v. Long Eaton U. D. C.*, [1915] 1 Ch. 124; 79 J. P. 129; 20 Digest 207, 48). The principle of the last-mentioned decision was applied in *Att.-Gen. v. Ilford U. D. C.* (1915), 13 L. G. R. 441; 20 Digest 199, 8, and in *Att.-Gen. v. Hackney Corporation*, [1918] 1 Ch. 372; 82 J. P. 116; 20 Digest 207, 50, which last-mentioned case was,

however, distinguished from the Long Eaton case on facts. By a contract for electric lighting installation, it was provided that the work should be completed in all respects before November 26th, 1898, subject to a penalty of £15 a day, and the plant by December 10th, subject to a penalty of £3 per day for every day the work remained unfinished to the satisfaction of the authorities or engineers:—*Held*, that although the word “penalties” was used, the amounts incurred owing to the default of the contractors were, in fact, “liquidated damages” (*Re White and Arthur* (1901), 84 L. T. 594; 17 Digest 140, 440). For the construction of an agreement for the supply of electricity and as to the finality of meter readings, see *Gravesend and Northfleet Electric Tramways, Ltd. v. Gravesend Corporation* (1910), 74 J. P. 156; 8 L. G. R. 445; 20 Digest 208, 57.

**Note to
Section 20.**

21. If any local authority, company, or person neglect to pay any charge for electricity or any other sum due from them to the undertakers in respect of the supply of electricity to such local authority, company, or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied, and may, until such charge or other sum, together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid, are fully paid, but no longer, discontinue the supply of electricity to such local authority, company, or person (a).

Recovery of
charges, etc.

(a) These charges are recoverable like gas rents, subject to the qualifications contained in the last clause of s. 12, *ante*, p. 4650. See also s. 18, Electric Lighting Act, 1909, *post*, p. 5102. Power is given by s. 45, Electricity (Supply) Act, 1928, Vol. V. and 7 Halsbury's Statutes 818, to recover expenses of reconnecting after a supply has been cut off under this section.

22. Any person who unlawfully and maliciously cuts or injures any electric line or work with intent to cut off any supply of electricity shall be guilty of felony, and be liable to be kept in penal servitude for any term not exceeding five years, or to be imprisoned with or without hard labour for any term not exceeding two years; but nothing in this section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence.

Injuring works
with intent to
cut off supply of
electricity.

23. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity shall be guilty of simple larceny and punishable accordingly.

Stealing
electricity.

24. Any officer appointed by the undertakers may at all reasonable times enter (a) any premises to which electricity is or has been supplied (b) by the undertakers, in order to inspect the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the undertakers (c), and for the purpose of ascertaining the quantity of electricity consumed or supplied, or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the undertakers (c), repairing all damage caused by such entry, inspection, or removal.

Power to enter
lands or
premises for
ascertaining
quantities of
electricity
consumed, or
to remove
fittings, etc.

(a) No penalty is provided for obstructing the officer. Compare the Gasworks Clauses Act, 1871, s. 21, *ante*, p. 4312.

(b) See note (b) to s. 10, *ante*, p. 4648.

(c) As to lines, etc., let on hire, or sold on the instalment principle, see s. 16 of the Electric Lighting Act, 1909, *post*, p. 5101. See also Electricity (Supply) Act, 1919, s. 23, *post*, p. 5259.

25. Where any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the undertakers (a) are placed in or upon any premises not being in the possession of the undertakers for the purpose of supplying electricity under this Act, or any licence, Order, or special Act, such electric

Electric lines,
etc. not to be
subject to
distress in
certain cases.

Section 25. lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be (b).

(a) See note (c) to s. 24, *ante*, p. 4655.

(b) A somewhat similar provision was contained in the Gasworks Clauses Act, 1847, s. 14, with reference to which see *Gaslight and Coke Co. v. Hardy* (1886), 17 Q. B. D. 619; 51 J. P. 6; 18 Digest 308, 438. A person who procures possession of a house under an agreement between him and the owner for a lease thereof, with the fraudulent intention of stealing the fixtures thereto belonging, and upon obtaining possession severs and steals the fixtures, was held to be guilty of larceny under the Larceny Act, 1861, s. 31 (*R. v. Richards*, [1911] 1 K. B. 260; 75 J. P. 144; 15 Digest 900, 9873). Section 31 of the Larceny Act, 1861, has now been repealed by the Larceny Act, 1916 (4 Halsbury's Statutes 814), which consolidated the law relating to larceny triable on indictment. See s. 8 of that Act (*op. cit.* 818).

Provision for
protection of
the Postmaster-
General.

41 & 42 Vict.
c. 76.

26. (a) No alteration in any telegraph line of the Postmaster-General shall be made by the undertakers except subject to the provisions of the Telegraph Act, 1878.

The undertakers shall not in the exercise of the powers conferred by this Act, or by any licence, Order, or special Act, lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs or the laying of connexions with mains where the direction of the electric lines so laid down crosses the line of the Postmaster-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) (b) the undertakers or their agents not more than twenty-eight nor less than seven clear days [one month, or, in the case of the laying of service lines to consumers' premises, seven clear days] (c) before commencing such work shall give written notice to the Postmaster-General specifying the course and nature of the work, including the gauge of any electric lines, and the undertakers and their agents shall conform with such reasonable requirements either general or special as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the said work.

Any difference which arises between the Postmaster-General and the undertakers or their agents with respect to any requirements so made, shall be determined by arbitration.

In the event of any contravention of or wilful non-compliance with this section by the undertakers or their agents the undertakers shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues, or, if the telegraphic communication is wilfully interrupted, not exceeding fifty pounds for every day on which such interruption continues.

Provided that nothing in this section shall subject the undertakers or their agents to a fine under this section, if they satisfy the court having cognizance of the case that the immediate execution of the work was required to avoid an accident, or otherwise was a work of emergency, and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the work was done a notice of the execution thereof, stating the reason for executing the same without previous notice.

For the purposes of this section a telegraphic line of the Postmaster-

General shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such work, or by any use made of such work. Section 26.

For the purposes of this section, and subject as therein provided, sections two, seven, eight, nine, ten, eleven, and twelve of the Telegraph Act, 1878, shall be deemed to be incorporated with this Act, as if the undertakers were undertakers within the meaning of those sections, without prejudice nevertheless to any operation which the other sections of the said Act would have had if this section had not been enacted (*d*).

(a) See also s. 4 of the Act of 1888, *post*, p. 4702. This section is extended by s. 24 (2) Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 808, to apply to all Government departments where the General Electricity Board are the undertakers. See also s. 46 (3), *ibid.*, in relation to supplies by railway companies.

(b) These words were repealed by s. 25 of the Electricity (Supply) Act, 1919, *post*, p. 5260.

(c) The italicised words were repealed by s. 25 of the Electricity (Supply) Act, 1919, and by the same section the words in brackets were inserted.

(d) Section 2 of the Telegraph Act, 1878 (19 Halsbury's Statutes 261), contains certain definitions of expressions used in that Act, and is amended by the Light Railways Act, 1896, s. 25 (14 Halsbury's Statutes 262). Section 7 (19 Halsbury's Statutes 265) makes provision as to work done in pursuance of special Acts of Parliament which involves alteration in any telegraphic line. Section 8 (*op. cit.* 267) deals with compensation and fines for injury to any telegraphic line of the Postmaster-General, and for interruption of telegraphic communication. Section 9 (*op. cit.* 268) enacts a penalty for obstruction. Section 10 (*op. cit.* 268) provides for the prosecution of offences. See further, as to the protection of the Postmaster-General, note (b) to s. 4 of the 1888 Act, *post*, p. 4702, and the Electric Lighting Clauses Act, 1899, Sched., clauses 14, 79, *post*, pp. 4956, 4980, and *Postmaster-General v. Liverpool Corporation*, [1923] A. C. 587; 87 J. P. 157; 20 Digest 212, 79.

27. [Purchase of undertaking by local authority.] (a)

(a) This section was repealed by the Electric Lighting Act, 1888, s. 2, *post*, p. 4701, which contained substituted provisions as to purchase by the local authority, but see now also s. 7 of the Electric Lighting Act, 1909, *post*, p. 5099, and s. 13 (2) and (3) of the Electricity (Supply) Act, 1919, *post*, pp. 5249—50.

28. Where any matter is by this Act, or any licence, Order, or special Arbitration Act (a), directed to be determined by arbitration, such matter shall, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade (b), on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs.

Any licence or Provisional Order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, etc., Act, 1874.

(a) Or by the Electric Lighting Clauses Act, 1899, *post*, p. 5243, where it applies. See, for instance, clause 18 (4) of the Schedule to that Act, *post*, p. 5254, and *Chepstow Electric Light and Power Co. v. Chepstow Gas and Coke Consumers' Co.*, [1905] 1 K. B. 198; 69 J. P. 72; 20 Digest 203, 26.

(b) See note (a) to s. 1, *ante*, p. 4643.

29. Where a supply of electricity is authorised in any area by any licence, Order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any Provisional Order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand (a), the Board of Trade (b) may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply

Power for Board of Trade to relieve gas undertakers from obligation to supply gas in certain cases.

Section 29. of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade (b) may in their discretion make an Order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such Order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade (b) in connection with any such inquiry or Order shall be borne and paid by the gas undertakers upon whose application the inquiry or Order was made.

(a) See the Gasworks Clauses Act, 1871, ss. 11, 36, *ante*, pp. 4309, 4316. As to the power of gas undertakers to obtain powers for the supply of electricity, see Statutory Gas Companies (Electricity Supply Powers) Act, 1925, Vol. V., *post*, and s. 49, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821.

(b) See note (a) to s. 1, *ante*, p. 4643.

Annual report
by Board of
Trade (a).

30. Not later than the first day of July in each year the Board of Trade (a) shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade (a) under this Act during the year then last past (b).

(a) See note (a) to s. 1, *ante*, p. 4643.

(b) See also s. 13 of the Electric Lighting Act, 1909, *post*, p. 5101, as to the Ministry of Transport making a return with regard to auditors' reports.

Definition of
local authority,
etc.

31. In this Act, unless the context otherwise requires, the expressions "local authority" and "local rate" mean, as respects each district set forth in the first column of the Schedule to this Act annexed, the authority and rate mentioned opposite to that district in the second and third columns of that Schedule; and such Schedule, and the notes appended thereto, shall be of the same validity as if enacted in the body of the Act.

Interpretation.

32. In this Act, unless the context otherwise requires—

The expression "electricity" means electricity, electric current, or any like agency (a):

The expression "electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying transmitting, or distributing electricity or electric currents:

The expression "works" means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act (b):

The expression "company" means any body of persons corporate or unincorporate:

8 & 9 Vict. c. 18.
23 & 24 Vict.
c. 106.
32 & 33 Vict.
c. 18.

The expression "Lands Clauses Acts" means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869:

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any licence, Order, or special Act (c):

The expression "telegram" has the same meaning as in the Telegraph Act, 1869 (d). **Section 32.**

(a) See definition of "energy" in the Electric Lighting Clauses Act, 1899, Sched., clause 1, *post*, p. 4949. 32 & 33 Vict.
c. 73.

(b) See *Meux's Brewery, Ltd. v. City of London Electric Lighting Co.*, *ante*, p. 4653, and note (b) to s. 10, *ante*, p. 4648.

(c) See a further definition of this expression for the purposes of the Electric Lighting Act, 1888, s. 4, in sub-s. (5) of that section, *post*, p. 4703.

(d) By s. 3 of the Telegraph Act, 1869 (19 Halsbury's Statutes 251), the term "telegram" shall mean any message or other communication transmitted or intended for transmission by telegraph. And the term "telegraph" shall, in addition to the meaning assigned to it in the Telegraph Act, 1863 (*op. cit.*, 219), mean and include any apparatus for transmitting messages or other communications by means of electric signals. These definitions include the telephone and telephonic messages (*Att.-Gen. v. Edison Telephone Co. of London* (1880), 6 Q. B. D. 244; 42 Digest 885, 1).

33. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals. For the
protection of
mines.

34. Nothing in this Act shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future session of Parliament (a). Provision as to
general Acts.

(a) *Cf.* the Gasworks Clauses Act, 1847, s. 49, *ante*, p. 4176.

35. Nothing in this Act or in any licence, Order, or special Act, shall affect the exclusive privileges conferred upon the Postmaster-General by the Telegraph Act, 1869, or authorise or enable any local authority, company, or person to transmit any telegram or to perform any of the incidental services of receiving, collecting, or delivering telegrams, or give to any local authority, company, or person, any power, authority, or facility of any kind whatever, in connection with the transmission of telegrams, or the performance of any of the incidental services of receiving, collecting, or delivering telegrams (a). Saving for
privileges of
Postmaster-
General.

(a) See also the Electric Lighting Act, 1888, s. 4 (5), *post*, p. 4703. The Postmaster-General may, by written licence, under the Telegraph Act, 1869, s. 5 (19 Halsbury's Statutes 252), authorise the transmission of telegrams otherwise than by the post office. As to payment of expenses of exercise of powers by an urban district council under a telephone licence from the Postmaster-General, see the Telegraph Act, 1899, s. 2, *post*, p. 4987.

Section 36 relates to Scotland, and s. 37 to Ireland. These sections and the parts of the Schedule relating to Scotland and Ireland are omitted.

* * * * *

Schedule.

SCHEDULE.

ENGLAND AND WALES.

Districts of Local Authorities.	Description of Local Authority or District set opposite its name.	The Local Rate.	Security upon which Loans are to be contracted(a).	Authority whose Consent is required to borrowing by Local Authority (a).	Provisions and Restrictions as to borrowing and the Repayment of Loans (a).	Mode of Audit of Accounts of Local Authority (a).
The City of London and the liberties thereof.	The Mayor, Commonalty, and Citizens acting by the Commissioners of Sewers.	The consolidated sewers rate.				
Parts of the Metropolis which the Metropolitan Board of Works are authorised to light.	The Metropolitan Board of Works.	The consolidated rate.				
Parish mentioned in Schedule A. to the Metropolis Management Act, 1855.	The vestry.	The lighting rate or other fund or rate applicable for lighting.	The local rate as herein defined.	The Metropolitan Board of Works(b).	Those contained in sections one hundred and eighty-three to one hundred and ninety-one (both inclusive) of the Metropolis Management Act, 1855.	That prescribed by section one hundred and ninety-five of the Metropolis Management Act, 1855.
District mentioned in Schedule B. to the Metropolis Management Act, 1855.	The district board.					

Schedule

Urban sanitary district (1).	The urban sanitary authority (1).	The fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district, or any other fund or rate applicable to lighting under any local Act (c).	The local rate as herein defined and any property of the local authority.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875 (e).	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	In the case of boroughs (2), that prescribed by section two hundred and forty-six of the Public Health Act, 1875, and in the case of other urban sanitary authorities that prescribed by section two hundred and forty-seven of the same Act (e).
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health Act, 1875 (d).	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875 (e).	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	That prescribed by section two hundred and forty-eight of the Public Health Act, 1875 (e).

NOTES.

(1) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the P. H. A., 1875 (13 Halsbury's Statutes 623).

(2) "Borough" means any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intitled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same. [This Act is now repealed, and see now L. G. A., 1933, Sched. I., Pts. II. and III., *ante*, pp. 1197, 1198.

(a) The entries in the fourth, fifth, sixth, and seventh columns were repealed by the L. G. A., 1933, Sched. XI., Pt. IV., *ante*, p. 1282, so far as they related to urban sanitary districts and rural sanitary districts.

(b) By s. 28 of the Electricity (Supply) Act, 1922, Vol. V., *post*, any expenses incurred by the L. C. C. under or in pursuance of that Act or the Electricity (Supply) Acts, 1882 to 1919, are to be defrayed as expenses for general county purposes.

(c) See the Rating and Valuation Act, 1925, s. 2 (1), *ante*, p. 2117, and the L. G. A., 1933, ss. 185, 188, 191, *ante*, pp. 1013, 1015, 1019.

(d) See the Rating and Valuation Act, 1925, s. 3, *ante*, p. 2124, and the L. G. A., 1933, s. 190, *ante*, p. 1016.

(e) As the entries now relate only to boroughs (see note (a), *supra*), these provisions cease to apply.

Section 1.

THE PUBLIC WORKS LOANS ACT, 1882.

(45 & 46 VICT. c. 62) (a).

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners.
[18th August, 1882.]

Short title.

1. This Act may be cited as "The Public Works Loans Act, 1882."

(a) See the Public Works Loans Act, 1875, *ante*, p. 4544.

Citation of Acts.
38 & 39 Vict.
c. 89.
42 & 43 Vict.
c. 77.

2. This Act may be cited, together with the Public Works Loans Act, 1875, and the Public Works Loans Act, 1879 (a), as the Public Works Loans Acts, 1879 to 1882.

(a) *Ante*, p. 4619.

PART I.

GRANT OF MONEY FOR PUBLIC WORKS LOAN COMMISSIONERS DURING THE
PERIOD ENDING JUNE 30TH, 1883.

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PART II.

GRANT OF MONEY FOR PUBLIC WORKS COMMISSIONERS, IRELAND.

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PART III.

GRANT OF MONEY FOR IRISH LAND COMMISSION.

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PART IV.

AMENDMENT OF ACTS.

7. (a) . . .

Amendment
of 24 & 25 Vict.
c. 45, as to
provision for
loans in
Provisional
Order respect-
ing harbours.

- (1) Where a Provisional Order under the General Pier and Harbour Act, 1861, authorises any public body to raise a loan for the construction of any works as defined by that Act in any place, the same or any other order may authorise any rating authority as hereinafter defined in that place, under the circumstances and subject to the conditions specified in the order, to charge, if they think it expedient for the inhabitants at large of such place, any fund or rate under their control for the purpose of aiding the public body in raising the said loan, or any part thereof, from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order.
- (2) The order shall provide that the resolution of the rating authority to give the guarantee shall be a special resolution, that is to say, a resolution passed at one meeting of such authority and published

in manner directed by the order, so as to give notice to all persons interested, and confirmed at a second meeting of the rating authority held not less than fourteen days after the first of such public notices has been given, and not less than three months after the meeting at which the resolution was passed. Section 7.

- (3) The order shall provide for the time within which and the mode in which any money borrowed by the rating authority is to be repaid, and for the effectual recovery out of the said fund or rate of any sum payable under the guarantee, and of the principle and interest of any money borrowed by the said authority, and for the reimbursement of the fund or rate out of the income of the said works, or otherwise by the said public body, and shall contain such incidental provisions as seem necessary or proper for carrying this section into effect.
- (4) The promoters of an order proposing to confer power under this section on any rating authority shall, a reasonable time before they apply to the Board of Trade to settle the order, submit to the Local Government Board . . . a statement of such proposal, and if the Local Government Board . . . declare that in their opinion, having regard to the financial condition of the rating authority, or to the necessity for such rating authority to provide a water supply or drainage for the inhabitants of the said place, or otherwise to fulfil the original duties of such authority, it is inexpedient to burden such rating authority with any such charge as is mentioned in such proposal, the Board of Trade in settling the order shall omit any provision conferring power on the rating authority under this section (b).

In this section—

The expression “public body” means any rating authority, also any commissioners, or trustees, or other body or person who manage or undertake the works without any view to the payment of any dividend or profits out of the revenue from such works :

The expression “rating authority” means—

- (1) As regards England, any authority being an urban sanitary authority under the Public Health Act, 1875 (c), and the Acts amending the same; and (d) 38 & 39 Vict.
c. 55.

(a) The preamble to this section is repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

(b) Words relating to Scotland only are omitted from this sub-section.

(c) See s. 6 of that Act (13 Halsbury's Statutes 628). This definition is extended by the Public Works Loans Act, 1887, s. 4, *post*, p. 4700, to rural sanitary authorities, quarter sessions, and county councils.

(d) The remainder of this section relates to Scotland and Ireland only, and is, therefore, omitted.

8. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account (a), and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made (b). Account in case
of loan on
security of rate.
38 & 39 Vict.
c. 89.

(a) This prevents any such order from being a bill of exchange within the meaning of the Bills of Exchange Act, 1882. See s. 3 (3) of that Act (2 Halsbury's Statutes 37).

**Note to
Section 8.**

(b) Section 9 repealed the Public Works Loans Act, 1875, s. 13, *ante*, p. 4549, and the Public Works Loans (Ireland) Act, 1877, s. 11, and is itself repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173). Section 10 relates to Ireland only, and s. 11 makes provision with regard to certain local loans, and are therefore omitted.

* * * * *

THE LANDS CLAUSES (UMPIRE) ACT, 1883.

(46 & 47 VICT. c. 15.)

An Act to amend the Lands Clauses Consolidation Act, 1845.

[18th June, 1883.]

Amendment of
s. 28 of 8 Vict.
c. 18, extending
the powers of
appointment of
umpire by
Board of Trade.

1. . . . section twenty-eight of the Lands Clauses Consolidation Act, 1845 (a), shall be read and have effect as follows:

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

(a) See that section, *ante*, p. 4115. This Act is printed having regard to the repeals in s. 1 effected by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

Short title.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

THE PUBLIC HEALTH ACT, 1875 (SUPPORT OF SEWERS), AMENDMENT ACT, 1883.

(46 & 47 Vict. c. 37.)

An Act to amend the Public Health Act, 1875, and to make provision with respect to the Support of Public Sewers and Sewage Works in Mining Districts.

[25th August 1883.]

Short title
and
construction.

1. This Act may be cited as the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875 (in this Act called the principal Act), as amended by the Acts for the time being in force amending the same.

This Act has been referred to in the notes to some of the sections of the P. H. A., 1875. It was passed apparently in consequence of *Re Corporation of Dudley and Dudley's (Earl) Trustees* (1881), 8 Q. B. D. 86; 46 J. P. 340; 36 Digest 182, 262, where the Court of Appeal held that the P. H. A., 1875, *ante*, p. 4331, imposed upon land-owners through whose land a sewer was laid, an obligation to preserve to such sewer *subjacent* support, and gave them a right to immediate compensation for being deprived of the free power of working subjacent minerals. The court seemed to doubt whether any obligation was imposed as to *lateral* support, though from the remarks of JESSEL, M.R., in *Roderick v. Aston L. B.* (1877), 5 Ch. D. 328; 41 J. P. 516; 41 Digest 22, 174, it might be inferred that in his opinion there was a right also of lateral support

for which the landowner was entitled to compensation. See also the decision of PARKER, J., on this point in *Jary v. Barnsley Corporation*, *post*, p. 4666.

The present Act deals with the subject of "support," but though the title would imply that it has reference only to "sewers," the definition in the next section shows that it has a much wider application. Its effect is briefly as follows: The local authority are not to be entitled to minerals under any sanitary works constructed by them unless such minerals have been expressly purchased. Such minerals must not be worked if under or near the works without giving notice to the authority, who may then require them to be left unworked, making compensation for them. The authority may, however, define the extent to which they desire support to be left. The amount of compensation is to be settled by arbitration. If the authority refuse to take the minerals, the owner is to be at liberty to work them, though he must not do so in any unusual manner so as to cause damage. Power is preserved to the owner, if he is prevented from working the mines under the sanitary works, of making mining communications so as to work the mines on either side. Except as aforesaid, a local authority are not hereafter to acquire any right of support, whether vertical or lateral; but the saving clause preserves all rights acquired before the passing of the Act. This Act materially affects the amount of compensation to be paid by a local authority in a mining district, for as by the mere execution of a sanitary work they acquire no right of support, they will not have to pay for it until the owner of the minerals is desirous of working them. It is to be noticed, however, that the Act is limited in its application to support from mining lands. The law as to support in other cases remains as it was before the Act passed; that is to say, as declared in the *Dudley Case*, *supra*.

By a Provisional Order, confirmed by Act of Parliament in 1875, the B. Corporation were authorised to put in force the powers of the Lands Clauses Acts with regard to certain lands, which they required for sewage purposes. In October, 1875, the corporation gave to the predecessor in title of the plaintiffs notice to treat under that Order for some of his land (excepting the mines and minerals) which they required to take, and the question of compensation was referred to arbitration. In 1876, the arbitrator made his award in respect of the lands (excepting all minerals lying within or under the same). The compensation having been paid, the lands, excepting all minerals lying within or under the same, were conveyed to the corporation by two conveyances, dated May, 1878, and April, 1883; the conveyances contained a power for the owner to work the minerals by underground workings only. In 1876, the corporation gave notice to the plaintiffs' predecessor in title, under the P. H. A., 1875, that they proposed to construct an outfall sewer on certain land in his possession, and in 1878, the umpire made his award (purporting to be under s. 308 of that Act, *ante*, p. 4515) reciting an agreement that the landowner should have rights of herbage, passage and building over the land, and awarding that the corporation should pay a perpetual ground rent of so much per lineal yard for the sewer. In 1904, the plaintiffs, the lessees of the mines, gave notice to the corporation that they intended to commence work within forty yards of the sewage works, and the corporation then gave notice that if the plaintiffs proceeded to work they would demand compensation in respect of any damage to their sanitary works, and that they claimed that they had acquired a right to support in respect of such works before the passing of the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883. The plaintiffs thereupon sued for a declaration that upon the true construction of the Act of 1883, the other Acts of Parliament, and the Provisional Order, awards and conveyances, the defendants were not entitled to have (1) the outfall sewer, or (2) the main sewage works, or either of them, supported by the underlying or adjacent minerals. It was held that the corporation acquired in respect of the lands conveyed for the purpose of the main sewage works a natural right of support by the subjacent minerals and the adjacent lands of the conveying parties for such land, and for any buildings or works reasonably in the contemplation of the parties when the land was conveyed; that with regard to the outfall sewer the corporation had, on the principle of *In re Dudley Corporation*, *ante*, p. 4664, a right to support from the subjacent land, if not also from the adjacent land in the same ownership, which right must be considered to have been covered by the award; and that the sewage works and outfall sewer were accordingly sanitary works in respect of which a right to support had been acquired before the passing of the Act of 1883, and in respect of which right no com-

**Note to
Section 1.**

pensation was, at the passing of that Act, recoverable; and that the sewage works and outfall sewer were, therefore, excepted by s. 5, *post*, p. 4669, from the operation of the Act, and were entitled to the rights of support required in respect of them (*Jary v. Barnsley Corporation*, [1907] 2 Ch. 600; 71 J. P. 468; 41 Digest 36, 265).

**Interpreta-
tion.**

2. In this Act—

The expression “sanitary work” means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal Act or of any general or local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

The expression “support” includes vertical and lateral support:

The expression “Sanitary Act” means the Act or Provisional Order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or Order was passed and confirmed before or after the commencement of this act:

The expression “person” includes a body corporate.

It will be observed that the Act applies to the support of any “sanitary works,” though the title would imply that it was confined to sewers. Thus, it will apply to gas and water works, or pipes, and to sewage works other than sewers.

As to the right of a local authority to support for buildings and property not being sanitary works within the meaning of this Act, see *Durham C. C. v. South Medomsley Colliery, Ltd.* (1916), 80 J. P. 343. And as to the right of support for sanitary works under leases, see *Westhoughton U. D. C. v. Wigan Coal and Iron Co., Ltd.*, [1919] 1 Ch. 159; 88 L. J. Ch. 60; 120 L. T. 242; 34 Digest 686, 800.

Application
of provisions
of Water-
works
Clauses Act,
1847, with
respect to
mines, to
sanitary
works over
mines.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive) (a), with respect to mines, shall, in relation to any sanitary work (b) of a local authority, be deemed to be incorporated with this Act and with the Sanitary Act (b) under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say):

(1) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression “the undertakers” referred to the local authority, and as if the expression “the special Act” referred to such Sanitary Act (b) and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work (b):

(2) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines (c), may specify and define the nature and extent of support which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards

mentioned in the said Act or to such less distance as the local authority think fit (d) : Section 3.

- (3) As regards sanitary works existing at the passing of this Act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act (e) :
- (4) The amount of any compensation in respect of support for a sanitary work (b) payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act (b), together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the Sanitary Act (f) :
- (5) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines.

The provisions of this Act shall apply to every sanitary work as defined in this Act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place (g).

(a) See these sections and notes thereto, *ante*, pp. 4179 *et seq.* These sections alter the common law where they are applicable. See *Davies v. James Bay Rail. Co.*, [1914] 1 A. C. 1043 ; 83 L. J. P. C. 339 ; 111 L. T. 946 ; 30 T. L. R. 633. Common law right to lateral support.

The position of a local authority who have a common law right to lateral support of land owned by them was considered under the following circumstances : In 1875 the Manchester Corporation purchased by agreement under the powers of a special Act incorporating the Act of 1847, *ante*, p. 4176, (1) an estate from S., who reserved to himself the minerals thereunder, with full powers to work the same without making compensation ; (2) an adjoining estate from T., including the minerals. In 1875 the corporation obtained a further special Act, which incorporated the Waterworks Clauses Act, 1847, and under it they constructed a reservoir partly on the S. land and partly on the T. land. By s. 22 of the Waterworks Clauses Act, 1847, *ante*, p. 4181, if the owner, lessee, or occupier of any mines lying under the reservoirs of the undertakers, or within forty yards therefrom, be desirous of working the same, he must give the undertakers notice in writing of his intention so to do thirty days before the commencement of working, and if it appear to the undertakers, after an inspection of the mines, that the working of the mines is likely to damage their works, and they be willing to pay compensation for the mines to the owner, lessee, or occupier thereof, then he shall not work the same ; and by s. 23, *ante*, p. 4182, if before the expiration of the thirty days the undertakers do not state their willingness to pay compensation to such owner, lessee, or occupier, he may work the mines as if that Act and the special Act had not been passed. The appellants, lessees of the mines under the S. land, gave notice to the corporation of their intention to work the mines under and adjacent to the reservoir, but the corporation gave no counter-notice of their willingness to pay compensation for the mines, and accordingly the appellants worked the mines and caused a subsidence of the T. land. In an action to restrain

**Note to
Section 3.**

the appellants from so working their mines as to damage the T. land :—*Held*, that the mining sections (18—27) of the Waterworks Clauses Act, 1847, *ante*, pp. 4179—4183, did not deprive the corporation of their common law right to lateral support of the surface of the T. land, and that they were entitled to an injunction in respect of the appellants' workings, both within and without the forty yards limit (*New Moss Colliery, Ltd. v. Manchester Corporation*, [1908] A. C. 117; 72 J. P. 169; 11 Digest 154, 356). See also *Howley Park, etc. Co. v. L. & N. W. Rail. Co.*, [1913] A. C. 11; 11 Digest 152, 345, as to the common law right of support enjoyed by a railway company outside the forty yards limit referred to in the mining sections of the Railways Clauses Consolidation Act, 1845, *ante*, p. 4156. See also *John Hargreaves, Ltd. (Exors.) v. Burnley Corporation*, [1936] 3 All E. R. 959; 101 J. P. 87; Digest Supp.

(b) See the definition in the last section.

(c) The notice here referred to is the notice to the owner not to work the minerals, under the Act of 1847, *ante*, p. 4176.

(d) Forty yards is the distance prescribed by the Act of 1847. Under this Act the authority may require support to any extent, whether less or more than forty yards. This will to some extent, if not altogether, obviate the difficulty arising out of the decision in *Metropolitan Board of Works v. Metropolitan Rail. Co.*, *ante*, p. 30.

(e) That is, on or before August 25th, 1884. See the section referred to, *ante*, p. 4180. Compliance with this requirement is a condition precedent to the right to recover damage for injury caused by subsidence (*South Staffordshire, etc. Co. v. Mason* (1886), 56 L. J. Q. B. 255; 11 Digest 153, 354).

(f) That is to say, such compensation shall be paid pursuant to the provisions of the principal Act, unless the work is done pursuant to a special Act or Provisional Order which makes special provision for these purposes.

(g) This clause was probably inserted to protect the rights of the owners of mines under roads vested in urban authorities under the P. H. A., 1875, s. 149, *ante*, p. 4375. It has been decided that that section does not vest the minerals in the urban authority (see cases in the notes thereto); and the Highway and Locomotives (Amendment) Act, 1878, s. 27, *ante*, p. 4611, contains an express provision with reference to the right to work mines under distumpiked roads which have become vested in an urban authority. See *Att.-Gen. v. Conduit Colliery Co.* there cited. The case of *Normanton Gas Co. v. Pope* (1883), 52 L. J. Q. B. 629; 49 L. T. 798; 11 Digest 154, 359, as to the right of subjacent support for gas pipes laid in a highway, may be referred to in illustration of this clause.

Limitation
of right to
support for
sanitary
works over
mines.

4. Except as in this Act provided, a local authority shall not by reason only of anything contained in the Sanitary Act (a) under the authority of which a sanitary work (b) has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such Sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

(a) See the definition in s. 2, *ante*, p. 4666.

(b) This section gives the Act a retrospective operation, except in cases where a right of support has already been acquired, as to which see the next section, and *Jary v. Barnsley Corporation*, *ante*, p. 4664. Its effect is to prevent for the future the acquisition of any right of support otherwise than as provided by the Act. Therefore no such right can hereafter be acquired by prescription. But as to the common law right of support which may belong to a local authority, see *New Moss Colliery, Ltd. v. Manchester Corporation*, *supra*.

With reference to the operation of the Statute of Limitations upon the right of

action arising out of subsidences caused by mining operations, see *Darley Main Colliery Co. v. Mitchell* (1886), 11 App. Cas. 127; 51 J. P. 148; 32 Digest 341, 238; *Crumbie v. Wallsend L. B.*, [1891] 1 Q. B. 503; 55 J. P. 421; 17 Digest 91, 82; *West Leigh Colliery Co., Ltd. v. Tunncliffe and Hampson, Ltd.*, [1908] A. C. 27; 17 Digest 91, 85.

Note to
Section 4.

5. Nothing in this Act shall be construed to repeal, invalidate, or **Savings.** affect any express enactment in a sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceeding concluded before or pending at the passing of this Act.

Where any right of support has been acquired (a) before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

(a) Note these words. This section was inserted to preserve to the local authority such rights of support as they had actually acquired by prescription or otherwise at the date of the Act. But such a right must have been actually acquired; in other words, if it is claimed to have been acquired by prescription, the prescriptive period must have been complete before the passing of the Act. If it was not complete the landowner will be entitled to the benefit of the Act.

As to such rights there is nothing in the previous sections which can apply so as to govern in any way the relative rights of the local authority and the landowner in respect of rights of support: see *Jary v. Barnsley Corporation*, *ante*, p. 4664.

THE PUBLIC HEALTH (CONFIRMATION OF BYELAWS) ACT, 1884.

(47 & 48 VICT. c. 12.)

An Act to amend the Public Health Act, 1875, so far as relates to the Confirmation of Byelaws. [19th May 1884.]

1. This Act may be cited as the Public Health (Confirmation of **Short title** Byelaws) Act, 1884, and shall be construed as one with the Public **and** Health Act, 1875. **construction.**

2. In this Act, if not inconsistent with the context, the following **Definitions.** expressions have the meanings hereinafter respectively assigned to them; (that is to say,)

“Incorporated enactments” means section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847 (*), sections sixty-eight and sixty-nine of the Town Police Clauses Act, 1847 (†), and section forty-two of the Markets and Fairs Clauses Act, 1847 (‡), which Acts are hereinafter referred to as the Incorporated Acts (a):

(*) 10 &
11 Vict. c. 34,
s. 128: By-
laws as to
slaughter-
houses.

Section 2.

(†) 10 &
11 Vict. c. 89.
ss. 68, 69 :
Byelaws as
to hackney
carriages
and public
bathing.

(‡) 10 &
11 Vict. c. 14,
s. 42 : Bye-
laws as to
markets.

“Confirming authority” means, as regards byelaws, rules, and regulations confirmed prior to the nineteenth day of August one thousand eight hundred and seventy-one, or made under any of the incorporated enactments by reason of the incorporation thereof with any local Act and confirmed prior to the tenth day of August one thousand eight hundred and seventy-two, one of her Majesty’s principal Secretaries of State ; and as regards other byelaws, rules, and regulations, the Local Government Board (b).

(a) The Towns Improvement Clauses Act, 1847, s. 128 (13 Halsbury’s Statutes 573), provides that the commissioners, *i.e.*, the urban authority, shall, from time to time, by byelaws to be made and confirmed *in manner hereinafter provided*, make regulations for the licensing, etc. of slaughter-houses, etc. The manner provided by that Act is set out in ss. 200—209 (13 Halsbury’s Statutes 593—595), which are not, however, incorporated with the Public Health Act, but it would seem, notwithstanding, that these provisions applied to byelaws made by a local authority pursuant to the P. H. A., 1875 (*Wallasey Tramway Co. v. Wallasey L. B.* (1883), 47 J. P. Jo. 821). However this may be, s. 202 required the byelaws to be confirmed in the prescribed manner, and if no manner of confirmation were prescribed, then by a judge of the superior courts or by the justices in quarter sessions. In order to remove all doubts with regard to the application of these provisions to byelaws made by a local authority under the P. H. A., 1875, *ante*, p. 4468, this Act provides that no confirmation shall be necessary in future except that of the L. G. B. (now the Minister of Health). Provision is also made for the validity of past confirmation by the Secretaries of State under former Public Health Acts or local Acts. The foregoing remarks apply *mutatis mutandis* to the other incorporated enactments, all of which are set out, *ante*, pp. 4200, 4222.

(b) As to the provisions of the P. H. A., 1875, with regard to the confirmation of byelaws, see s. 184, *ante*, p. 4468. But see now s. 251 of the L. G. A., 1933, *ante*, p. 1104, for the procedure in most cases.

Confirmation
of byelaws.

3. Every byelaw made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any local Act, or any provisional order or any Act confirming such provisional order, and every rule and regulation made or to be made by an urban authority under section forty-eight of the Tramways Act, 1870 (a), shall be deemed to have required or to require the confirmation of the confirming authority, and not to have required, or to require any other confirmation, allowance, or approval.

This section was repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. V., *ante*, pp. 720, 730, so far as it relates to byelaws made under the Town Police Clauses Act, 1847, s. 69 (13 Halsbury’s Statutes 604), by virtue of its incorporation with the P. H. A., 1848, the L. G. A., 1858, or the P. H. A., 1875. It is further repealed so far as it relates to byelaws made under s. 128 of the T. I. P. Act, 1847 (13 Halsbury’s Statutes 573), or s. 42 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury’s Statutes 464), by virtue of their incorporation with the Acts of 1848, 1858 and 1875, by the Food and Drugs Act, 1938, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1456.

(a) See the section *ante*, p. 4998.

Saving
clause.

4. This Act shall not invalidate the confirmation, allowance, or approval of any byelaw, rule, or regulation, confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any byelaw made or to be made under any of the incorporated

enactments by reason of the incorporation thereof with any local Act, if such byelaw has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the local Act and without reference to the provisions with respect to confirmation, allowance, or approval of byelaws in any of the incorporated Acts, such byelaw is required to be confirmed, allowed, or approved otherwise than by the confirming authority.

Section 4.
—

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

(47 & 48 VICT. c. 70) (a).

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections.
[14th August, 1884.]

1. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

(a) This statute applies to elections of urban district councillors and of rural district councillors under Rules made under s. 40 of the L. G. A., 1933, *ante*, p. 774. It is, therefore, set out here. It was made a permanent Act by s. 35 of the Representation of the People Act, 1918, *post*, p. 5175. The notes have reference only to the application of the Acts to elections of urban district councillors and of rural district councillors. For an amending Act of 1911, see *post*, p. 5118.

CORRUPT PRACTICES.

2.—(1) The expression “corrupt practice” in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in Part One of the Third Schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation (a).

Definition and punishment of corrupt practices at municipal election.

(2) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election (b).

(a) This provision takes the place of a repealed clause in s. 77 of the Municipal Corporations Act, 1882. The offence of aiding, etc. the commission of the offence of personation is new. See further the *East Kerry Case* (1910), 6 O'M. & H. 58; 20 Digest 95, f.

(b) By the Corrupt and Illegal Practices Prevention Act, 1883, s. 6 (7 Halsbury's Statutes 467), corrupt practices other than personation, or aiding, etc. in the commission of personation, are declared to be misdemeanors, and any person convicted of any of them is liable to be imprisoned, with or without hard labour, for a term not exceeding two years, or to be fined any sum not exceeding £200. A person who commits the offence of personation or of aiding, etc. the commission of that offence, is guilty of felony, and liable on conviction to be imprisoned, with or without hard labour, for a period not exceeding two years. In addition to these punishments, a person who is convicted on indictment of any corrupt practices shall not be capable for a period of seven years from the date of his conviction (a) of being registered as an elector or voting at any election in the United Kingdom whether it be a parliamentary election or an election for any public office (see *infra*); or (b) of holding any public or judicial office (see *infra*), and if he holds any such office the office shall be vacated. Any person so convicted of a corrupt practice in reference to any election shall also be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his conviction, and if at that date he has been elected to the House of Commons his election shall be vacated from the time

**Note to
Section 2.**

of such conviction. By s. 64 (7 Halsbury's Statutes 500), the expression "public office" means any office under the Crown or under the charter of a city or a municipal borough, or under the Acts relating to municipal corporations, or to the poor law, or under the Elementary Education Act, 1870 (*op. cit.* 120), or under the P. H. A., 1875, *ante*, p. 4331, or under any Acts amending the above-mentioned Acts, or under any other Acts for the time being in force (whether passed before or after the commencement of this Act) relating to local government, whether the office is that of mayor, chairman, alderman, councillor, guardian, member of a board, commission, or other local authority in any county, city, borough, union, sanitary district, or other area, or is the office of clerk of the peace, town clerk, clerk or other officer under a council, board, commission, or other authority, or is any other office to which a person is elected and appointed under any such charter or Act as above mentioned, and includes any other municipal or parochial office; and the expressions "election," "election petition," "election court," and "register of electors," shall, where expressed to refer to an election for any such public office, be construed accordingly. The expression "judicial office" includes the office of justice of the peace.

As to the form of indictment for corrupt practices, see *R. v. Stroulger* (1886), 17 Q. B. D. 327; 51 J. P. 278; 20 Digest 188, 1644.

Each act of bribery is a distinct offence for which separate penalties are incurred (*Milnes v. Bale* (1875), L. R. 10 C. P. 591; 39 J. P. 743).

Incapacity of
candidate
reported guilty
of corrupt
practice.
45 & 46 Vict.
c. 50.

3.—(1) Where upon the trial of an election petition (*a*) respecting a municipal election (*b*) for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882 (*c*), that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office (*d*) in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice (*e*).

(2) Upon the trial of an election petition (*a*) respecting a municipal election (*b*) for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office (*d*), in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

(*a*) As to election petitions in respect of corrupt practices, see the Municipal Corporations Act, 1882, s. 87, *ante*, p. 4627; and in respect of illegal practices, see s. 25 of this Act, *post*, p. 4683. For the application of these sections to elections of urban district councillors and of rural district councillors, see Rules made under s. 40 of the L. G. A., 1933, *ante*, p. 774.

(*b*) This includes for the purposes of this Work, the election of urban district councillors and of rural district councillors. See the Election Rules reproduced, *post*, pp. 2538 *et seq.*

(*c*) *Ante*, p. 4631.

(*d*) This means the office of an urban or rural district councillor, as the case may be. See the Election Rules, *ante*, p. 2538. But where he is guilty of a corrupt practice by his agents only and not personally, he is not deprived of his right to vote at a parliamentary election (*Morris v. Shrewsbury Town Clerk*, [1909] 1 K. B. 342; 73 J. P. 28; 20 Digest 18, 105).

(*e*) These incapacities are set forth in note (*b*) to s. 2, *ante*, p. 4671. A single act of bribery by an agent will render an election void (*Norwich Case*, *Birkbeck v. Bullard* (1886), 54 L. T. 625; 4 O'M. & H. 84; 20 Digest 87, 671).

ILLEGAL PRACTICES (a).

Section 4.

4.—(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

Certain expenditure to be illegal practice.

- (a) on account of the conveyance of electors to or from the poll, whether for the hiring of horses or carriages, or for railway fares, or otherwise; or
- (b) to an elector on account of the use of any house, land, building, or premises for the exhibition of an address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or
- (c) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward (b), and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election (c), the person making such payment or contract shall be guilty of an illegal practice, and any person (d) receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section (e).

(a) The Act must be "taken to be amended as if the illegal practice defined by" the amending Act of 1911 "had been contained therein." The illegal practice referred to (see the Act, *post*, p. 5118) is the making or publishing of certain false statements with regard to a candidate.

(b) In applying this clause to elections of urban district councillors, the word *borough* or *ward* must be read to mean *urban district* or *ward of such district*, or *parish* or *united parishes* in the case of elections of rural district councillors.

(c) See note (b) to s. 3, *ante*, p. 4672.

(d) The word *person* here is presumed to mean elector in cases falling within clause (b), as it does not appear to be illegal to make payments such as those mentioned in that clause to any person other than an elector.

(e) This proviso qualifies the provisions of clause (b).

5. [*Expense in excess of maximum to be illegal practice*] (a).

(a) This section cannot apply to elections of urban district councillors for districts not being boroughs or of rural district councillors. See s. 37, *post*, p. 4689. So far as it was operative, it was amended by s. 1 of the Local Elections (Expenses) Act, 1919 (7 Halsbury's Statutes 645), which substituted "twopence for each elector" for "threepence for each elector."

6.—(1) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice (a).

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

(2) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

Section 6. (3) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent (b).

(a) As to the persons prohibited from voting by this Act, see ss. 7, 8, 13, 18, 22, 23 and Sched. III., Part II. A convicted felon is disqualified to vote at any election until he has undergone his punishment or been pardoned (Forfeiture Act, 1870, s. 1 (4 Halsbury's Statutes 648)).

(b) But *quære*, if the illegal practice has been committed by his agents. It would appear from s. 8 (2), *infra*, that the election would be avoided in that event.

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at an election (whether it be a parliamentary election or an election for a public office (a) within the meaning of this Act) held for or within the borough (b) in which the illegal practice has been committed.

(a) As to what is a public office, see note (b) to s. 2, *ante*, p. 4671.

(b) See note (b) to s. 4, *ante*, p. 4673.

Incapacity of candidate reported guilty of illegal practice.
45 & 46 Vict. c. 50.

8.—(1) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part Four of the Municipal Corporations Act, 1882 (a), and a petition alleging such illegal practice may be presented and tried accordingly.

(2) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough (b) in which a charge is made of any illegal practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents (c) of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents (c) of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office (d) in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice (e).

(a) This part of the Municipal Corporations Act, 1882, is set out, *ante*, p. 4626

(b) See note (b) to s. 4, *ante*, p. 4673.

(c) But in the case of the illegal practice defined by the amending Act of 1911, *post*, p. 5118, a candidate is not necessarily to be held responsible for the act of his agent: see s. 1 (4) *ibid.*, *post*, p. 5118.

(d) See note (d) to s. 3, *ante*, p. 4672.

(e) These incapacities are stated in s. 7, *supra*.

ILLEGAL PAYMENT, EMPLOYMENT, AND HIRING.

Providing of money for illegal practice or payment to be illegal payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act (a), or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception (b), such person shall be guilty of illegal payment (c).

(a) The provisions of this Act as to maximum expenses do not apply to elections of urban district councillors or of rural district councillors. See s. 37, *post*, p. 4689.

(b) See ss. 19, 20, *post*, p. 4678.

(c) Employment for payment of persons to keep order at meetings is an illegal employment (*Ipswich Case*, *Packard v. Collings* (1886), 54 L. T. 619; 20 Digest 78, 573). Gratuitous refreshments to workers render their employment illegal within this section (*Barrow-in-Furness Case*, *Schneider v. Duncan* (1886), 54 L. T. 618; 20 Digest 50, 326).

10.—(1) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring. **Section 10.**

Employment of hackney carriages, or of carriages and horses kept for hire (a).

(2) A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does do so he shall be guilty of illegal hiring.

(3) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4) No person shall be liable to pay any duty or to take out a licence for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

(a) See the *Hartlepool Case* (1910), 6 O'M. & H. 1; 20 Digest 50, 329.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election (a), in consideration of any payment or promise of payment (b), shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment. **Corrupt withdrawal from a candidature.**

(a) See note (b) to s. 2, *ante*, p. 4671.

(b) Note that the consideration must be payment or promise of payment. Withdrawal for other considerations is not within this section. By s. 34, *post*, p. 4688, and s. 64 of the Corrupt and Illegal Practices Prevention Act, 1883 (7 Halsbury's Statutes 500), therein referred to, the expression "payment" includes any pecuniary or other reward, and the expressions "pecuniary reward" and "money" include any office, place or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions referring to money must be construed accordingly.

12.—(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction (a). **Certain expenditure to be illegal payment.**

(2) Subject to such exception as may be allowed in pursuance of this Act (b), if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment, if he knew that the same was contrary to law (c).

(a) Cards to be worn in voters' hats bearing a likeness of the candidate and an invitation to vote for him, are marks of distinction within the meaning of this section (*Walsall (Borough) Case, Hateley, Moss and Mason v. James* (1892), 4 O'M. & H. 123; 20 Digest 48, 307).

(b) See ss. 19, 20, *post*, p. 4678.

(c) Note that ignorance of the law will not be an excuse for the party paying.

13.—(1) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment, or promise of payment for any purpose or in any capacity whatever (a), except as follows (that is to say), **Certain employment to be illegal.**

Section 13.

- (a) a number of persons may be employed, not exceeding two for a borough or ward (b), and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and
- (b) one polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business (c).

(2) Subject to such exception as may be allowed in pursuance of this Act (d), if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment (d), and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act (e).

(3) A person legally employed for payment under this section may or may not be an elector, but may not vote (f).

(a) *E.g.*, an election agent (*Ex parte Walker* (1889), 22 Q. B. D. 384; 53 J. P. 260; 20 Digest 145, 1199).

(b) See note (b) to s. 4, *ante*, p. 4673.

(c) This appears to be intended to meet the case of a person who contracts for the purposes of the election, *e.g.*, for printing. The employees of such persons are not to be deemed to be employed within the meaning of this section.

(d) Note that ignorance of the law will not be an excuse for the party employing.

(e) See ss. 19, 20, *post*, p. 4678.

(f) This sub-section was repealed by s. 47 and the 8th Schedule to the Representation of the People Act, 1918, *post*, p. 5186, and by s. 9 (4) of that Act, *post*, p. 5170, it is provided that a person shall not be disqualified from voting by reason that he is employed for payment so long as the employment is legal.

Name and
address of
printer on
placards.

14. Every bill, placard, or poster having reference to a municipal election (a) shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds (b).

(a) See note (b) to s. 2, *ante*, p. 4671.

(b) The appellant was a candidate for a seat on a local board. The respondent received from his own servant at his residence a printed address and letter having reference to the election, and purporting to be signed by the appellant, but having no printer's name thereon. This document was printed for publication by instructions conveyed to the printer in a letter from the appellant's brother, who resided with him. The printer debited the appellant with the cost of printing, but was not paid: — *Held*, on these facts, that there was no evidence that the appellant had "printed or caused to be printed" the document in question. Placards or posters also without the printer's name and address printed by the instructions of one E., who was advertised in a local newspaper as chairman of a committee for promoting the election of the appellant, and who sent the copy to the printer, were proved to have been posted about the district at E.'s expense. The court doubted whether this was evidence of the printing and posting by an agent of the appellant, but the justices having convicted the appellant in one penalty for both offences, and the conviction being bad as to the first: — *Held*, that it was bad altogether (*Bettesworth v. Allingham* (1886), 16 Q. B. D. 44; 50 J. P. 55; 20 Digest 130, 1036).

In the above case the court seemed to assume that a circular containing an election address was a bill, placard, or poster within the meaning of the section. In some cases which came before the courts subsequently, it was held that such a circular was not a bill, placard, or poster. See *per* Lord COLERIDGE, C.J. and MANISTY, J., in the cases reported in 5 T. L. R. 160; and *per* FRY, L.J., and MANISTY, J., *ibid.*, 170. In other cases, however, the court granted relief under s. 20, *post*, p. 4678 (*e.g.*, *Ex parte Bartlett*, Times, October 30th, 1900), so that the point is still in doubt.

In *Alcott v. Emden* (1904), 68 J. P. 434; 20 T. L. R. 487; 20 Digest 130, 1038, it was held that a circular sent out in August with reference to the possible candidature in November of a certain alderman for the office of mayor, such circular being headed "Shall he be our new mayor?" and six copies marked private being sent in sealed envelopes to certain persons interested in the election, was a bill with reference to a municipal election within the meaning of this section and should have borne the printer's name and address.

The name and address of the publisher must appear as well as those of the printer if they are different persons. It has not yet been expressly decided whether a candidate is liable to penalties under this section if he publishes a placard, etc. on which his name and address appear, but which does not explicitly describe him as the publisher; but in the year 1889 the High Court excused a number of candidates in respect of such omissions.

A person other than a candidate is not by this section declared to be guilty of an illegal practice, payment, employment, or hiring. He cannot, therefore, be excused under s. 20, *post*, p. 4678 (*Re County Council Elections, Ex parte Lenanton, Ex parte Pierce* (1889) 53 J. P. 263; 20 Digest 145, 1198).

**Note to
Section 14.**

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act (*a*). Saving for
creditors.

(*a*) Hence in the case of an expense incurred in contravention of the Act, the illegality of the expense will be no defence to an action by a creditor who, when the expense was incurred, was ignorant of its being in contravention of the Act. This provision is necessary for the protection of creditors who have no means of knowing what other expenses have been incurred by a candidate. The provisions of the Act as to maximum expenses do not, however, apply to elections of district councillors for urban districts not being boroughs or of rural district councillors. See s. 37, *post*, p. 4689. See ss. 19, 20, *post*, p. 4678.

16.—(1) (a) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises (*a*), or Use of certain
premises for
committee
rooms or
meetings to be
illegal hiring.

(*b*) Any premises where any intoxicating liquor is supplied to members of a club, society or association, or any part of any such premises, shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

(*a*) It should be noticed that this section applies to any premises on which refreshment is sold for consumption on the premises, or on which liquor is sold, whether for consumption on or off the premises. It applies even where the door of communication between the part used for the election and the part used for the sale of intoxicating liquors is kept locked (*Ex parte Payne*, Times, November 2nd, 1894). Thus a place where sandwiches are sold for consumption at the counter was in one case which came before the court in 1839 held to be within this provision; but the section does not apply to a club unless liquor is supplied in it.

17.—(1) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds. Punishment of
illegal payment,
employment, or
hiring.

Section 17. (2) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice (a).

(a) And punishable as provided by s. 7, *ante*, p. 4674.

Avoidance of election for extensive illegal practices, etc.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed (a) that they may be reasonably supposed to have affected the result of that election (b), the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office (c) in the said borough.

(a) Note that this section may apply, although the practices in question have been committed by persons other than the candidate or his agents; but in such a case the candidate could protect himself under ss. 19, 20, *infra*.

(b) See also s. 1 (4) of the amending Act of 1911, *post*, p. 5118.

(c) See note (b) to s. 2, *ante*, p. 4671.

EXCUSE AND EXCEPTION FOR CORRUPT OR ILLEGAL PRACTICE OR ILLEGAL PAYMENT, EMPLOYMENT, OR HIRING.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences (a), in reference to such election, and the election court further report that the candidate has proved to the court—

- (a) that no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate (b); and
 - (b) that all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and
 - (c) that the offences mentioned in the said report were of a trivial, unimportant, and limited character; and
 - (d) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;
- then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

(a) Note that the offences of bribery, personation, and aiding and abetting in the commission of personation are not included here.

(b) See also s. 1 (4) of the amending Act of 1911, *post*, p. 5118.

Power of High Court and election court to except innocent act from being illegal practice, etc.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the court sufficient—

- (a) that any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring (a); and

- (b) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and
- (c) that such notice of the application has been given in the said borough as to the court seems fit;

Section 20.

and under the circumstances it seems to the court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission (b).

(a) Note that corrupt practices are not mentioned here.

(b) Relief may be given under this section by the High Court, on application for that purpose, or by an election court. As to the election court, see s. 92 of the Municipal Corporations Act, 1882, *ante*, p. 4680.

From the refusal of the High Court to grant relief under this section appeal lies to the Court of Appeal. See *Ex parte Walker* (1889), 22 Q. B. D. 384; 53 J. P. 260; 20 Digest 145, 1199. See also *Ex parte Thomas* (1889), 60 L. T. 728; 5 T. L. R. 234; 20 Digest 146, 1218; *Ex parte Birtwhistle* (1889), 5 T. L. R. 321.

In order to support an application under this section, it will not be sufficient that notice of intention to make the application has been advertised in the local papers, but such notice should be published in such a manner as will ensure a reasonable certainty that persons interested had notice; and it will also be insufficient if the affidavits upon which the application is made merely state that the act in respect of which the relief is sought arose from inadvertence, and not from any want of good faith, without showing some reasonable excuse for such inadvertence (*Ex parte Perry* (1884), 48 J. P. 824; 20 Digest 148, 1248). In the cases which came before the court in 1889 it was laid down that "inadvertence" meant negligence or carelessness where the circumstances showed an absence of bad faith. The court also required notice to be given to the opposing candidates and to the returning officer. The court also required that notices should be posted up throughout the district, and advertised in the local papers, that application would be made for relief. Notice need not, however, be given to the Attorney-General (*Re County Council Elections, Ex parte Lenanton, Ex parte Pierce* (1889), 53 J. P. 263; 5 T. L. R. 173; 20 Digest 145, 1198). Where an application for relief under similar circumstances is made by several candidates, a joint affidavit of the facts upon which the application is based ought to be made by all the applicants (*Re Andrews, Re Streatham Vestry* (1899), 68 L. J. Q. B. 683; 20 Digest 148, 1256).

There have been numerous applications to the High Court for excuse under this section especially in the beginning of the year 1889, with reference to the first elections of county councillors. These cases will be found reported in 5 T. L. R., pp. 178, 183, 195, 198, 208, 206, 220, and 272. They must not, however, be regarded as precedents, for the court granted relief almost as a matter of course where it was shown that the applicant had acted in ignorance of the law, but at the same time expressed an opinion that such an excuse would not afterwards be accepted. See the observations in *Re Dunchurch Division Warwick County, Ex parte Darlington* (1889), 53 J. P. 71; 20 Digest 146, 1217; *Re County Council Elections, Ex parte Lenanton, supra*. Since then see *Ex parte Payne*, Times, November 2nd, 1894; *Ex parte Hughes*, Times, November 24th, 1900. As to the ignorance of an agent reference may be made to *Ex parte Polson* (1923), 39 T. L. R. 231.

Among the cases reported before 1889 may be mentioned the following: *Re Huntingdon (Borough) Municipal Election, Ex parte Clark* (1885), 52 L. T. 260; 20 Digest 146, 1203, where placards had been issued without the printer's name; *Ex parte Perry* (1884), 48 J. P. 824; 20 Digest 148, 1248, where a room in a club had been used contrary to s. 16; *Re South Shropshire Election* (1886), 2 T. L. R. 347; 20 Digest 144, 1186, where payments were made after the proper time (and see *Re Ipswich Case* (1887), 3 T. L. R. 397); *Ex parte Robson* (1886), 18 Q. B. D. 336; 51 J. P. 199; 20 Digest 133, 1075, where a candidate who had incurred no expenses was allowed to make a return and declaration under s. 21 after the prescribed time; *Ex parte Matthews* (1886), 2 T. L. R. 548; 20 Digest 147, 1231, where a candidate had acted as his own agent, and had omitted to make a declaration of expenses. See also *Ex parte Groom* (1920), 42 M. C. C. 175. In *Ex parte Touche* (1915), 37 M. C. C. 219, relief was granted where the statutory maximum of expenses allowed in a case where there was no poll was exceeded in the expectation that there would be a poll for election of sheriffs. In the case of *Re Essex, South West Division Case* (1886), 2 T. L. R. 388; 20 Digest 51, 330, where a person voted, and afterwards accepted payment

**Note to
Section 20.**

for services rendered as an agent, the court refused to relieve him. *Ex parte Robson*, (1886), 18 Q. B. D. 336; 51 J. P. 199; 20 Digest 133, 1075, was followed in *Ex parte Pennington* (1898), 46 W. R. 415; 20 Digest 133, 1076.

In *Ex parte Gale* (1905), 69 J. P. 281; 20 Digest 147, 1225, the candidate had postcards printed and issued, asking for the support of the electors, in ignorance that this was an illegal expense under s. 5 of this Act. He was relieved under this section.

Where a person had obtained an excuse for a late return of expenses, and subsequently on the same day, but after the order had been drawn up, a voter appeared to oppose the application, it was held that the application of the voter must be dismissed in the absence of any sufficient explanation of the delay (*Re Wigan Case* (1885), 2 T. L. R. 159; 20 Digest 148, 1252).

If the application is made by a person against whom a petition is pending, the court will order the application to stand over till after the trial of the petition (*Ex parte Wilks* (1885), 16 Q. B. D. 114; 50 J. P. 487; 20 Digest 147, 1238; *Re County Councils' Elections, Evans Case* (1889), 5 T. L. R. 206). But this course will not be followed merely because a petition is threatened (*Re County Councillors' Elections, Stephen's Case* (1889), *ibid.*, 203). Even where a petition is pending, if the facts are not in dispute and the subject-matter of the application for relief was the sole ground of the petition, the application will be dealt with immediately (*Ex parte Forster* (1903), 67 J. P. 322; 89 L. T. 18; 20 Digest 147, 1240).

Relief will not be granted to a successful candidate unless he satisfies the court that the illegal practice cannot have affected the result of the election (*Re Droitwich Elective Auditors' Case, Ex parte Tolley, Ex parte Slater* (1907), 71 J. P. 236; 23 T. L. R. 372; 20 Digest 138, 1130).

Sending in
claims and
making pay-
ments for
election
expenses.

21. (a)—(1) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election (b) shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice (c), but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails to do so shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3) Within twenty-eight days after the day of election of a councillor every candidate at such election shall send to the town clerk (d) a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.

(4) After the expiration of the time for making such return and declaration the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same (e).

(5) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration he shall be guilty of an illegal practice (c), and if he knowingly makes the said declaration falsely

he shall be guilty of an offence, (g) . . . and such offence shall also be deemed to be a corrupt practice within the meaning of this Act. Section 21.

(6) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk (h).

(7) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as the court seems just (i).

(8) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person (k) on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11) After the expiration of the said twelve months the town clerk may cause the return and declaration to be destroyed, or if the candidate so require shall return the same to him.

(a) This section does not apply to elections of urban district councillors for districts not being boroughs or of rural district councillors. See s. 37, *post*, p. 4689.

(b) Money paid by an agent of a candidate for the employment of persons to keep order at meetings connected with the election is within this provision (*Ipswich Case*, *Packard v. Collings* (1886), 54 L. T. 619; 20 Digest 78, 573).

(c) And therefore punishable as provided by s. 7, *ante*, p. 4674.

(d) This return and declaration must be made even in the case of an unopposed election, when the candidate has incurred no expenses. In such a case, however, the court granted relief under s. 20, *ante*, p. 4678 (*Ex parte Robson*, *ante*, p. 4679; *Ex parte Pennington*, *ante*, p. 4680). If the return is posted to the town clerk within the twenty-eight days, it is sufficient, although it does not reach him until after the expiration of that time (*Mackinnon v. Clark*, [1898] 2 Q. B. 251; 20 Digest 118, 963).

(e) Note that any person may sue. See *Nichol v. Fearby*, *Nichol v. Robinson*, [1923] 1 K. B. 480; 86 J. P. 204; 20 Digest 134, 1077. The Crown cannot remit the penalties. See *Todd v. Robinson*, *ante*, p. 829.

(g) Some words were repealed by the Perjury Act, 1911 (4 Halsbury's Statutes 772).

(h) Notice of application to the court must probably be given to the other candidates, to the returning officer, and to the public by advertisements (*Salop Southern or Ludlow Division Case* (1886), 54 L. T. 129; 34 W. R. 352; 20 Digest 144, 1186). An application for leave to pay the hire of a brougham used without authority by the clerk of a candidate was refused in *Chelsea Parliamentary Election* (1886), 2 T. L. R. 374; 20 Digest 102, 815.

For procedure in the county court, see County Court Rules, Order L., r. 16. Note that the county court is not mentioned in sub-ss. (7), (8), but it would probably be guided by them.

**Note to
Section 21.**

(i) The illness of an agent was accepted as an excuse in *Re Ipswich Case* (1887), 3 T. L. R. 397. See also *Nichol v. Fearby*, *Nichol v. Robinson*, [1923] 1 K. B. 480; 87 J. P. 70; 20 Digest 147, 1234, when relief was granted although application for same was not made until after the issue of the writ claiming penalties.

(k) Any person, not any person interested.

DISQUALIFICATION OF ELECTORS.

Prohibition of
persons guilty
of offences from
voting.

22. Every person guilty of a corrupt or illegal practice or of illegal employment, payment, or hiring at a municipal election (a) is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

(a) See note (b) to s. 2, *ante*, p. 4671.

Application of
ss. 37 and 38 of
46 & 47 Vict.
c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part Two of the Third Schedule to this Act, shall apply as part of this Act.

List in burgess
roll of persons
incapacitated
for voting by
corrupt or
illegal practices

24.—(1) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2) For the purpose of making out such list he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which the said borough is situate.

(3) The town clerk of any municipal borough shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers (a) of every parish wholly or partly within the borough, and the overseers shall publish that list together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5) The revising authority shall determine such claims and objections and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors. **Section 24.**

(7) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned. **45 & 46 Vict. c. 50.**

(a) Now to the rating authority (Overseers Order, 1927, Art. 3, *ante*, p. 3596).

PROCEEDINGS ON ELECTION PETITIONS.

25.—(1) A municipal election petition complaining of the election on the ground of an illegal practice (a) may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse (b). **Petition for illegal practice.**

(2) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried. **Time for presentation of petition alleging illegal practices.**

(3) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented (c). **45 & 46 Vict. c. 50.**

(4) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

(a) A petition may be presented for a corrupt practice under the Municipal Corporations Act, 1882, s. 87, *ante*, p. 4627.

(b) Under the Urban District Councillors Election Rules, 1934, and Rural District Councillors Election Rules, 1934, *ante*, pp. 2538, 2558, an election petition complaining of the election of an urban or rural district councillor on the ground of an illegal practice, may be presented at any time within six weeks after the day of election.

(c) A judge who is not on the rota for the trial of parliamentary election petitions cannot make an order giving leave to amend under this section. Such an order ought not to be made *ex parte* (*Pontefract Case, Shaw v. Reckitt*, [1893] 1 Q. B. 779). That question being a question of law, no appeal lies to the Court of Appeal from a decision of a Divisional Court thereon without leave to the Divisional Court (*Pontefract Case, Shaw v. Reckitt*, [1893] 2 Q. B. 59; 57 J. P. 805; 20 Digest 157, 1294).

Section 26.

Withdrawal of
election peti-
tion.

26. (a)—(1) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5) Copies of the said affidavits shall be delivered to the Director of Public Prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of Public Prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General) in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of Public Prosecutions or his assistant, or other representative may consider material.

(6) Where in the opinion of the court the proposed withdrawal of a petition is the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration (b).

(7) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit to be made by all such solicitors.

(a) See also the Municipal Corporations Act, 1882, s. 95, *ante*, p. 4633.

(b) See this section, *ante*, p. 4633.

Continuation of
trial of election
petition.

27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

28.—(1) On every trial of a municipal election petition the Director of Public Prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

Attendance of
Director of
Public Prosecu-
tions on trial of
election peti-
tion, and
prosecution by
him of
offenders.

(2) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity (a) and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that in case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence (b); and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6) Upon such order being made,

- (a) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear, and take his trial for the said offence; and
- (b) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and
- (c) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence,

Section 28.

shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882 (c).

45 & 46 Vict.
c. 50.

(8) The Director of Public Prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

45 & 46 Vict.
c. 50.

(9) The costs incurred in defraying the expenses of the Director of Public Prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct (d).

(a) See the Municipal Corporations Act, 1882, s. 92, *ante*, p. 4631.

(b) The evidence which is to satisfy the court before it makes the order means the evidence given during the trial of the petition, and, therefore, a commissioner for the trial of municipal election petitions acted within his jurisdiction in ordering the prosecution of a person to whom he had refused a certificate of indemnity, and who did not appear, without re-hearing the evidence affecting him, and also acted within his jurisdiction in issuing a summons under sub-s. (6), *post*, for his attendance before a court of summary jurisdiction, for the purpose of being formally committed for trial (*R. v. Shellard* (1889), 23 Q. B. D. 273; 53 J. P. 821; 20 Digest 192, 1684). The commissioner for the trial of municipal election petitions ordered certain persons, prosecuted before him for a corrupt practice committed at a municipal election in Nottingham, to be prosecuted on indictment for the offence at the ensuing assizes at Derby:—*Held*, that the commissioner had jurisdiction to order the trial at Derby; that his order was sufficient without describing the corrupt practice; that the Derbyshire grand jury could find, and the judge of assize had jurisdiction to try, the indictment; that “Derbyshire, to wit” in the margin of the indictment was sufficient, although the body of it disclosed offences in Nottingham only; that the words “a corrupt practice,” in the commissioner’s order, were reasonably interpreted “some corrupt practice,” and that the prosecution were not precluded from preferring a number of charges of bribery in the indictment (*R. v. Riley, R. v. Campion* (1890), 55 J. P. 21; 59 L. J. M. C. 122; 20 Digest 192, 1685).

(c) *Ante*, p. 4631.

(d) If a petition is utterly unfounded the petitioner may be ordered to pay the costs of the Director of Public Prosecutions (*Lambeth, Kennington Division Case, Crossman v. Davis* (1886), 54 L. T. 628; 20 Digest 117, 944). This section applies only to the trial of a petition. The costs of the Public Prosecutor cannot be ordered where the petition is withdrawn (*Devonport Case, Pascoe v. Puleston* (1886), 50 J. P. 134; 54 L. T. 733; 20 Digest 174, 1492).

Power to
election court
to order pay-
ment by
borough or indi-
vidual of costs
of election
petition.

29.—(1) Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either

of the whole or such part of the costs of the petition as the court may think right as follows: **Section 29.**

- (a) If it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough (a); and
- (b) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them (b), and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct (b).

(3) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part Four of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the High Court on the higher scale, as between solicitor and client. 45 & 46 Vict. c. 50.

(a) Or urban district council or rural district council.

(b) As to the recovery of these costs, see s. 32, *post*, p. 4688.

MISCELLANEOUS.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of Public Prosecutions in relation to any such offence, and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly (a) as if they were re-enacted in this Act with the necessary modifications, and with the following additions: General provisions as to prosecution of offences under this Act. 46 & 47 Vict. c. 51.

- (a) Where the Director of Public Prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough (b), he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the

Section 30.

offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

45 & 46 Vict.
c. 50.

- (b) General rules for the purposes of Part Four of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections (c); and

Section 94 (7).

- (c) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

(a) Therefore, where a private prosecutor prefers an indictment charging the commission of a corrupt practice the defendant, if acquitted, is entitled to recover from the prosecutor the costs sustained by reason of the indictment (*R. v. Lau*, [1900] 1 Q. B. 605; 20 Digest 189, 1647).

(b) See s. 36, *post*, p. 4689.

(c) That is, by the same authority by whom rules of court for procedure and practice in the Supreme Court of Judicature can be made. See the Corrupt and Illegal Practices Prevention Act, 1883, s. 56 (7 Halsbury's Statutes 497).

Person incapacitated by conviction or report to vacate seat or office.

31. If a person in consequence of conviction or of the report of an election court under this Act becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office (a), and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date.

(a) See s. 2, note (b), *ante*, p. 4671.

Payment and recovery of costs.

32.—(1) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate (a).

(2) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to her Majesty, and in either case may be recovered accordingly.

(a) The general rate fund and general rate are substituted for the borough fund and borough rate by the R. and V. Act, 1925, *ante*, p. 2113. The expenses of the urban district council or of the rural district council, are now payable out of the general rate (L. G. A., 1933, ss. 188, 191, *ante*, pp. 1015, 1019).

Service of notices.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough (a), whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed and registered with the post office.

(a) See s. 4, note (b), *ante*, p. 4673.

Definitions.

45 & 46 Vict.
c. 50.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882; and not the meaning

given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election. **Section 34.**

46 & 47 Vict.
c. 51.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll (a).

(a) That is, in relation to an election of urban or rural district councillors, the register of local government electors. See *ante*, pp. 2538, 2558, for the relevant Rules.

35. [Application to City of London of Act and of Part IV. of Municipal Corporations Act, 1882.]

APPLICATION OF ACT TO OTHER ELECTIONS.

36.—(1) [*Repealed (except as to London) by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., ante, pp. 1194, 1283.*] **Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections**

(2) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part Four of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the First Schedule to this Act (a). **Exemption from provisions as to maximum expenses.**

(a) The First Schedule has been repealed (see *infra*). By s. 48 (3) of the L. G. A., 1894, since repealed, this section was applied to every election regulated by rules framed under that Act as if the election were an election mentioned in the First Schedule to this Act. And by the Election Orders made under that Act, this section was to be read as if a reference to an election of urban or rural district councillors respectively was substituted for a reference to any of the elections mentioned in the First Schedule to the Act. The result was that this exemption from provisions as to maximum expenses, etc., applied to elections of rural district councillors and of urban district councillors for districts not being boroughs. In view of the provisions of s. 38 of the Interpretation Act, 1889, *ante*, p. 724, this position continues.

REPEAL.

38. [*Repeal of Acts*] (a).

(a) Repealed with the Second Schedule by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

39. [*Commencement of Act, October 1st, 1884*] (a).

(a) Repealed with the Second Schedule by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

EXTENT OF ACT.

40. This Act shall not extend to Scotland or Ireland.

Act not to extend to Scotland or Ireland.

41. [*Duration of Act*] (a).

(a) Repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173). This Act was made permanent by s. 35, Representation of People Act, 1918, *ante*, p. 5175.

Schedules.

SCHEDULES.

Section 36.

FIRST SCHEDULE.

ELECTIONS TO WHICH THIS ACT EXTENDS (a).

(a) This Schedule was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1283; see now *ibid.*, ss. 40 (2), 54 (2), *ante*, pp. 775, 786, and the Rules, *ante*, pp. 2538, 2558.

* * * * *

Section 2.

THIRD SCHEDULE.

PART I.

Enactments defining Corrupt Practices—Enactments defining the Offence of Bribery.

The Corrupt Practices Prevention Act, 1854, ss. 2, 3.

Bribery defined. S. 2. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly (a):

- (1) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.
- (2) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.
- (3) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
- (4) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.
- (5) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses bona fide incurred at or concerning any election.

(a) It is beyond the scope of the present Work to enter into a detailed discussion of the law relating to bribery and other corrupt practices. For information on this subject the reader is referred to works on the law of elections. One or two decisions may, however, be mentioned.

As to corrupt employment, see *Harding v. Stokes* (1836), 1 M. & W. 354; (1837), 2 M. & W. 233; 20 Digest 129, 1030; giving money after election, *R. v. Thwaites* (1853), 1 El. & Bl. 704; 22 L. J. Q. B. 238; 20 Digest 129, 1031.

Y. canvassed M., a voter at a municipal election, for his party, and on M. expressing an intention not to vote, told M. he would be remunerated for loss of time:—*Held*, that this was bribery (*Simpson v. Yeend* (1869), L. R. 4 Q. B. 626; 33 J. P. 677; 20 Digest 129, 1032).

“In order to make the payment of a rate for the purpose of enabling voters to be regis-

**Note to
Sched. III.**

tered affect the election, you must prove that it was done corruptly; that it was done thereby to influence their votes, which in my judgment means to induce them to vote for the person on whose behalf the payment was made": *per* MARTIN, B., in *Cheltenham Case, Gardner v. Samuelson* (1869), 1 O'M. & H. 62; 20 Digest 164, 1364. In order to make a third party responsible for the payment of a rate, it must be proved that he gave authority to the person to do the act. The common law rules of agency, therefore, and not those of election law, apply to this case (*Wigan Case* (1869), 1 O'M. & H. 188; *Ward's Practice at Elections*, p. 158; 20 Digest 63, 418).

A single case of bribery by an agent avoids an election (*Norwich Case, Birkbeck v. Bullard* (1886), 54 L. T. 625; 20 Digest 87, 671).

To offer a voter his travelling expenses if he will come and vote for a particular candidate is bribery (*Ipswich Case, Packard v. Collings* (1886), 54 L. T. 619; 20 Digest 78, 573).

In an indictment for bribery where the date of the offence, that is of the offer of the bribe, is given in the indictment, the date of the election need not also be alleged, and even if necessary might be inserted by way of amendment (*R. v. Yeoman* (1905), 20 T. L. R. 266).

S. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:

- (1) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.
- (2) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

Bribery
further de-
fined.

The Representation of the People Act, 1867, s. 49 (7 Halsbury's Statutes 405).

S. 49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly (a).

Corrupt pay-
ment of rates to
be punishable
as bribery.

(a) See the preceding note.

Enactment defining the Offence of Personation.

The Ballot Act, 1872, s. 24.

S. 24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name (a).

Personation
defined.

(a) H. obtained a voting paper signed by B., who was entitled to vote in an election of councillors, and gave it to F., requesting F. to go with it to the poll and vote for two candidates, and stating that F. would run no risk in doing so. F. went and handed in the paper, but on being questioned admitted that he was not B., and the vote was not received:—*Held*, that H. was properly convicted under Municipal Corporations Act, 1859, s. 9, of inducing F. to personate a voter. *Held*, further, that it was sufficient for the conviction to state that H. induced F. to personate B., and that it need not set out the details of the process by which F. carried out the personation (*R. v. Hague* (1864), 4 B. & S. 715; *sub nom. Hague v. Brown*, 28 J. P. 231; 20 Digest 188, 1642).

If a man applies to the presiding officer for a ballot paper in a name other than his name of origin, or in the name by which he is generally known, but in a name which appears on the register, and which was inserted by the overseers in the belief that it was the name of the applicant, and for the purpose of putting him on the register, he is entitled to vote, and is not a person who "applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person" (*R. v. Fox* (1887), 16 Cox, C. C. 166; 20 Digest 98, 773).

Sched. III.

In order to sustain a conviction for personation it is not necessary to state in the indictment, or to prove at the trial, that the presiding officer at the booth where the offence was committed was duly appointed. *Seemle*, the appointment of a presiding officer need not be in writing (*R. v. Garvey* (1887), 16 Cox, C. C. 252 (C. C. R. Ir. ; 20 Digest 188, d)).

Enactments defining the Offences of Treating and Undue Influence.

The Corrupt and Illegal Practices Prevention Act, 1883, ss. 1, 2.

What is treating.

S. 1. Any person who corruptly by himself or by any other person, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment or provision, shall also be guilty of treating (a).

(a) Treating is not the entertainment of equals by equals, but of an inferior by a superior, with the object of securing the goodwill of the inferior (*Norwich Case*, *Birkbeck v. Bullard* (1886), 54 L. T. 625 ; 20 Digest 87, 671). Giving a school feast was held not to be treating in the *Aylesbury Case* (1886), 4 O'M. & H. 59 ; 20 Digest 52, 344. It must be proved that the voter got his refreshment on account of his having polled or being about to poll (*per MANISTY, J.*, in *Hargreaves v. Simpson* (1879), 4 Q. B. D. 403 ; 43 J. P. 767 ; 20 Digest 129, 1034).

What is undue influence.

S. 2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

Enactment defining the Offences of Bribery, Treating, Undue Influence, and Personation.

The Municipal Corporations Act, 1882, s. 77.

Definitions.

S. 77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

Section 23.

PART II.*Enactments relating to Disqualification of Electors.*

The Corrupt and Illegal Practices Prevention Act, 1883, ss. 37, 38.

Prohibition of disqualified persons from voting.

35 & 36 Vict.
c. 60.
45 & 46 Vict.
c. 50.

S. 37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at any election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

S. 38.—(1) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported (d).

(5) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty. . . .

(6) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to any election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring the matter before the Inn of Court, High Court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such Inn of Court, High Court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8) With respect to a person holding a licence or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:

- (a) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licences:
- (b) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . . (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same: and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of Public Prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his licence, and such licensing justices shall cause such report to be entered in the proper register of licences:
- (c) Where an entry is made in the register of licences of any such conviction or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his licence or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

(a) This section excludes the right of a person charged with any corrupt or illegal practice at a municipal election to be heard by his counsel or solicitor (*R. v. Mansel Jones* (1889), 23 Q. B. D. 29; 53 J. P. 739; 20 Digest 187, 1626). But such a person must have an opportunity of being heard at least by himself (*R. v. Mansel Jones* (1894), 10 T. L. R. 515). Where after the trial of a municipal election petition the commissioner has reported persons as having been guilty of corrupt practices, the High Court has no jurisdiction to set aside or amend his report on the ground that the notice prescribed by this section was not given to the persons reported (*Preece v. Harding* (1889), 24 Q. B. D. 110; 20 Digest 187, 1624; *Re Wigan Municipal Case, Ex parte Johnson* (1894), 38 Sol. J. 386).

* * * * *

Sched. IV.

FOURTH SCHEDULE.

Section 21.

FORM OF DECLARATION BY CANDIDATE AS TO EXPENSES.

I, _____, having been a candidate at the election of councillor for the borough [or ward] of _____, on the _____ day of _____ [and my agents do hereby solemnly and sincerely declare that I have paid _____] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant C. D.

Signed and declared by the above-named declarant on the _____ day of _____ before me.

(Signed) E. F.

Justice of the Peace for _____

THE DISUSED BURIAL GROUNDS ACT, 1884.

(47 & 48 VICT. c. 72) (a).

An Act for preventing the erection of Buildings on Disused Burial Grounds.

[14th August, 1884.]

Short title.

1. This Act may be cited as the Disused Burial Grounds Act, 1884.

(a) The preamble to this Act, reciting Burial Act, 1852, and Burial Act, 1853 (2 Halsbury's Statutes 190, 210), and a few words in s. 3, are repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173).

Interpretation clause.

2. In this Act a "disused burial ground" shall mean a burial ground in respect of which an Order in Council has been made for the discontinuance of burials therein in pursuance of the provisions of the said recited Acts (a).

(a) For the definition of a burial ground as used in this Act, see the Open Spaces Act, 1887, s. 4, *post*, p. 4699, which section is to that extent not repealed by the Open Spaces Act, 1906, *post*, p. 5016. That definition includes land "set apart for the purposes of interment," even though it has been so set apart in contravention of an Order in Council made under s. 1 of the Burial Act, 1853 (2 Halsbury's Statutes 210), and consequently can never be lawfully used for the purposes of interment (*Re Bosworth and Gravesend Corporation*, [1905] 2 K. B. 426; 69 J. P. 337; 7 Digest 540, 204; following *Ward v. Portsmouth Corporation*, [1898] 2 Ch. 191; 62 J. P. 820; 7 Digest 540, 203). These cases were discussed in *Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214; 131 L. T. 634; Digest Supp., and doubt was expressed by TOMLIN, J., as to the correctness of the decisions. In the last-mentioned case it was held that land acquired for use as a burial ground but found unsuitable for the purpose and never used for interment was not a "disused burial ground." The case of *Nicholl v. Llantwit Major Parish Council* was distinguished and the earlier cases followed in *London C. C. v. Greenwich Corporation*, [1929] 1 Ch. 305; 93 J. P. 123; Digest Supp. See note (b), *post*, p. 4699, s. 143 (4) of the Housing Act, 1936, *ante*, p. 1742, and Sched. III., Pt. II., para. 4 (iv) of the Town and Country Planning Act, 1932, *ante*, p. 1997.

3. It shall not be lawful to erect any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting-house, or other places of worship (a). **Section 3.**

No buildings to be erected upon disused burial grounds, except for enlargement, etc.

(a) A. agreed to sell to B. a chapel and adjoining ground, in which human remains were interred. Both A. and B. knew of the interments, and also that B. intended to use the ground for building. After the contract was entered into, and before completion, the above Act was passed, rendering building on "disused burial grounds" illegal. It was admitted that the land sold was a disused burial ground within the meaning of the Act:—*Held*, that B. was, nevertheless, bound to complete his contract (*Bolesworth v. Davis* (1886), 3 T. L. R. 214; 7 Digest 555, 318). A perpetual injunction was granted against a vestry for erecting a band stand on a disused burial ground which had been thrown open to the public as an open space (*Att.-Gen. v. St. Pancras Vestry* (1893), 58 J. P. 22; 7 Digest 555, 316). And see *In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702; 7 Digest 552, 293. The erection of a screen by a local authority for the purpose of preventing an adjoining landowner, who had built on his land houses overlooking a disused churchyard, from acquiring any right of light, is not a building under this section and cannot be restrained by injunction (*Paddington Corporation v. Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41; 7 Digest 553, 300).

A faculty was refused for the construction of an underground electricity transformer in a "disused burial ground" on the ground that it was within the prohibition in s. 3 in the text (*St. Nicholas Acons (Rector and Churchwardens) v. L. C. C.*, [1928] A. C. 469; 92 J. P. 185; Digest Supp.). Where an application was made for a faculty to authorise, under the Open Spaces Act, 1906, *post*, p. 5016, the conversion of a disused burial ground into an open space and its laying out for such purpose including the erection of urinals and a toolshed, the urinals were excluded from the grant of the faculty as "buildings," but the toolshed was held not to be a "building" within the Acts (*Bermondsey B. C. v. Mortimer*, [1926] P. 87; Digest Supp.).

So far as this section relates to churches it only permits buildings to be erected which are in physical communication with the church and enlarge it for the main and primary purpose of religious worship. It would not therefore permit the erection of a separate building to be used as a vestry hall and for Sunday schools and other parochial purposes (*London C. C. v. Dundas*, [1904] P. 1; 7 Digest 554, 315).

4. Nothing in this Act shall prevent the erection of any building on a disused burial ground for which a faculty has been obtained before the passing of this Act. Savings for buildings already sanctioned.

5. Nothing in this Act contained shall apply to any burial ground which has been sold or disposed of under the authority of any Act of Parliament (a). Savings of burial ground sold by Act of Parliament

(a) This section applies to dispositions made after the Act (*In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702; 7 Digest 552, 293; *Att.-Gen. v. London Parochial Charities Trustees*, [1896] 1 Ch. 541; 7 Digest 552, 298). Under s. 24 of the Burial Act, 1857 (2 Halsbury's Statutes 235), power to let and sell the unconsecrated parts of disused burial grounds was given to the trustees thereof, the proceeds to be applied in discharge of incumbrances and the balance for the benefit of the parish as the vestry should direct. For a decision as to the present right to direct the application of the proceeds in such a case, see *St. George's, Hanover Square (Rector and Churchwardens) v. Westminster Corporation*, [1910] A. C. 225; 74 J. P. 153; 7 Digest 551, 287. The trustees of a disused chapel and burial ground had applied to the Charity Commissioners for their sanction to the sale of the premises as a building site. It was held that such a sale by order of the Commissioners would not be a "sale or disposition under the authority of any Act of Parliament" within the meaning of this section (*In re Howard Street Congregational Chapel, Sheffield*, [1913] 2 Ch. 690; 7 Digest 552, 296). A sale of a disused burial ground by the Admiralty under their general powers of sale of surplus lands under the Admiralty Lands and Works Act, 1864 (3 Halsbury's Statutes 370), is not a sale under the authority of an Act of Parliament within this section (*London C. C. v. Greenwich Corporation*, [1929] 1 Ch. 305; 93 J. P. 123; Digest Supp.).

THE QUARRY (FENCING) ACT, 1887.

Section 1.

THE LOCAL LOANS SINKING FUNDS ACT, 1885.

(48 & 49 VICT. 30) (a).

An Act to amend the Local Loans Act, 1875, as regards the Establishment of a Sinking Fund. [22nd July, 1885.]

Short title.

1. This Act may be cited for all purposes as the Local Loans Sinking Funds Act, 1885.

(a) This Act amends the Local Loans Act, 1875, *ante*, p. 4530. Section 13 of that Act, *ante*, p. 4535, which provides for the discharge of loans, enacts that such discharge shall be secured by one or more of certain prescribed methods. Of these methods one relates to a sinking fund, and is in these words: "*Where a sinking fund is prescribed, but not otherwise* [such discharge shall be secured], by the establishment of a sinking fund, and the application thereof in manner in this Act mentioned." The amending Act in effect repeals the words printed in italics, and enables a loan to be discharged by means of a sinking fund, although it has not been prescribed by the special Act authorising the loan. The preamble to this Act and s. 3 are repealed by the S. L. R. A., 1898 (18 Halsbury's Statutes 1173). Reference should be made to s. 198 (2) of the L. G. A., 1933, *ante*, p. 1034, for the power given to suspend sinking-fund payments in case of money borrowed for revenue producing works.

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

3. [*Commencement of Act, September 1st, 1885.*]

Discharge of loans by sinking funds.

38 & 39 Vict. c. 83.

4. Notwithstanding anything contained in the Local Loans Act, 1875, every loan borrowed in manner provided by that Act may be discharged by the establishment of a sinking fund as therein mentioned, notwithstanding that a sinking fund may not have been prescribed by the special Act authorising the loan.

THE QUARRY (FENCING) ACT, 1887.

(50 & 51 VICT. c. 19.)

An Act to provide for the Fencing of Quarries.

[19th July, 1887.]

Short title.

1. This Act may be cited as the Quarry (Fencing) Act, 1887.

2. [*Commencement of Act, January 1st, 1888.*]

Fencing of quarries.

3. Where any quarry dangerous to the public is in open or uninclosed land, within fifty yards of a highway or place of public resort dedicated to the public, and is not separated therefrom by a secure and sufficient fence, it shall be kept reasonably fenced for the prevention of accidents, and unless so kept shall be deemed to be a nuisance liable to be dealt with summarily in manner provided by the Public Health Act, 1875 (a).

(a) An unfenced quarry which is within this section is, therefore, a nuisance within the meaning of the former s. 91 of the P. H. A., 1875 (13 Halsbury's Statutes 661), now s. 92 of the Act of 1936, *ante*, p. 293. Proceedings may consequently be taken against the owner or occupier under that and the succeeding sections. Notice must be given to the owner or occupier under s. 93, *ante*, p. 300, requiring the nuisance to be abated by the erection of a proper fence. If the notice is disregarded complaint may be made to justices under s. 94, *ante*, p. 307, and the local authority may themselves abate the nuisance and recover the expenses under ss. 95 (2), 96, *ante*, pp. 314, 315. But members of a district council are not liable to a charge of manslaughter in case anyone is killed by falling into an unfenced quarry merely because that council have omitted to exercise their powers under the above-mentioned enactments (*R. v. Clerk of Assize of Oxford Circuit*, [1897] 1 Q. B. 370; 61 J. P. 197; 13 Digest 249, 228). See also as to the common law obligation on the possessor of a dangerous excavation by the side of the highway to keep it fenced off (*Att.-Gen. v. Roe*, [1915] 1 Ch. 235; 79 J. P. 263; 7 Digest 285, 148).

Note to
Section 3.

It should be noticed that this Act applies to quarries which are being worked as well as to those which have ceased to be worked. In this respect it differs from the somewhat similar provisions of the Coal Mines Act, 1911, *post*, p. 5120, and the Metalliferous Mines Regulation Act, 1872 (12 Halsbury's Statutes 19).

As to the repair and enclosing of dangerous places, and the fencing of lands adjoining streets, see ss. 30 and 31 of the P. H. A. Amendment A., 1907, *post*, pp. 5050—52.

The plaintiff was in the occupation of the surface of a field, and the defendants were in the occupation of a quarry in the same field, which they had enlarged. Both held under the same landlord. The quarry was entirely unfenced. One of the plaintiff's bullocks fell into the quarry and was killed:—*Held*, that the plaintiff was entitled to recover damages from the defendants for the loss of the bullock (*Hawken v. Shearer and Another*, W. N. (1887) 89; 56 L. J. Q. B. 284; 7 Digest 288, 166).

A proprietor is under no obligation to fence a disused quarry on his property which is at a distance of upwards 150 yards from the nearest point of the public road. A person on a dark night left the public road, and was found in the morning in a dying state at the bottom of the face of a disused quarry, eighteen feet in height. The quarry was more than 150 yards from the nearest point of the public road. A path, which had served as an access to the quarry when it was in use eight years before, left the public road about 200 yards from the quarry, and continued towards the quarry, which was overgrown with long grass and willows. The path was occasionally used by inhabitants of the district, but, against the remonstrances of the proprietor and his tenant, passed within six yards of the edge of the quarry face. The person who had fallen in was a stranger in the district, and was unable to give any account of how he had reached the spot where he fell. In an action for damages against the proprietor by the representatives of the deceased, a jury found for pursuers. A new trial was granted on the ground that the evidence disclosed no fault on the part of the defender (*Prentices v. Assets Co., Ltd.* (1890), 17 Ct. of Sess. Cas. (4th ser.) 484; 7 Digest 286, 157 ii).

4. In this Act—

Interpretation.

The term “quarry” includes every pit or opening made for the purpose of getting stone, slates, lime, chalk, clay, gravel, or sand, but not any natural opening.

5. This Act shall not extend to Scotland and Ireland.

Extent of Act.

THE WATER COMPANIES (REGULATION OF POWERS)
ACT, 1887.

(50 & 51 VICT. c. 21.)

An Act to limit the Powers of the Water Companies to cut off the Tenant's Water Supply where the Rate is paid by the Landlord. [8th August, 1887].

1. This Act may be cited as “The Water Companies (Regulation of Powers) Act, 1887.” Short title.

2. This Act shall not extend to Scotland or Ireland.

Extent of Act.

3. This Act shall apply to every water company which is a trading company supplying water for profit (a), and to which any of the provisions of the Waterworks Clauses Act, 1847, have been or shall be made applicable by any special Act or Provisional Order confirmed by Parliament, and every such special Act or Provisional Order shall be deemed to be amended by this Act, and shall be construed accordingly (b). Application of Act.

(a) See *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299.

(b) From this section it appears that it does not apply to a local authority supplying water by virtue of the powers contained in the P. H. A., 1936, *ante*, p. 4, as such an authority is not a trading company supplying water for profit. The Provisional Order here referred to is an Order obtained under the Gas and Water Works Facilities Act, 1870, *ante*, p. 4264, and the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, *ante*, p. 4328.

Section 4.

Water not to be cut off where the water rate is payable by the owner.

4. Where the owner and not the occupier is liable by law (a) or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement no water company shall cut off the water supply for non-payment of the water rate (b), but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner (c), shall, together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises (d); and (without prejudice to such charge) the amount may be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered (e): Provided always, that proceedings shall not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate; and provided also, that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand (e).

(a) The owner of a house not exceeding £10 rent is liable to pay water rates by virtue of the Waterworks Clauses Act, 1847, s. 72, *ante*, p. 4199, but it should be noted that that section is not incorporated with the P. H. A., 1936 (see *ante*, pp. 368-9). The words "is liable" refer to a liability at the date when the water rate became due, and if there was at that date an occupier other than the owner, and the owner and not the occupier was liable for the payment of that rate, the section prohibits the water company from cutting off the supply for non-payment of the rate, even after the occupier has given up possession and the premises have become vacant (*Metropolitan Water Board v. Bibbey*, [1911] 2 K. B. 74; 75 J. P. 322; 43 Digest 1095, 254).

(b) The power to cut off the supply of water for non-payment of water rate is given by Waterworks Clauses Act, 1847, s. 74, *ante*, p. 4200.

(c) These remedies are given by the Waterworks Clauses Act, 1847, s. 74, *ante*, p. 4200, and the Waterworks Clauses Act, 1863, s. 16, *ante*, p. 4259. The owner of a block of flats which were respectively of an annual value not exceeding £20 entered into an agreement with a water company for the supply of water to the flats by meter. The owner subsequently mortgaged the premises, and upon his getting into financial difficulties, the mortgagees appointed the defendant to act as receiver of the rents on their behalf. At the date of the defendant's appointment there were arrears owing to the plaintiffs (successors to the company) for water supplied to the flats under the agreement. CHANNELL, J., held that the defendant was not the owner of the premises within the meaning of this section and was not liable as such for the arrears existing at the time of his appointment (*Metropolitan Water Board v. Brooks*, [1910] 2 K. B. 184; 74 J. P. 233). The Court of Appeal reversed the decision of CHANNELL, J., but not on this ground ([1911] 1 K. B. 289; 75 J. P. 41; 43 Digest 1087, 207).

(d) See the notes to the corresponding provisions of s. 291 of the P. H. A., 1936, *ante*, p. 588. This charge will not, however, be a "local land charge" to be registered under s. 15 of the Land Charges Act, 1925, Vol. V., *post*. The words "in priority to all other charges" appear to be superfluous, as the charge under the Act would affect the property in the hands of a mortgagee. See *Birmingham Corporation v. Baker* (1881), 17 Ch. D. 782; 46 J. P. 52; 26 Digest 536, 2357.

(e) A landlord gave a tenant notice to quit, and on the tenant continuing to remain in possession gave notice to a water company to cut off the supply, which they did:—*Held*, that, as the cutting off had not been for non-payment of the water rate, the above Act did not apply (*Chelsea Waterworks Co. v. Paulet* (1888), 52 J. P. 724; 4 T. L. R. 239; 43 Digest 1095, 253).

The effect of the above section is, that a purchaser of the freehold of a dwelling-house is liable to a personal action at the suit of the waterworks company to recover arrears of water rate which accrued due before the date of the purchase (*East London Waterworks Co. v. Kellerman*, [1892] 2 Q. B. 72; 56 J. P. 773; 43 Digest 1093, 242).

5. In the event of any such supply being cut off in contravention of this Act, the company cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to, the person aggrieved (a). Section 5.
Penalty on cutting off of supply in contravention of the Act.

(a) Although *prima facie* the tenant would be the person aggrieved, the landlord may also be "aggrieved" (*Metropolitan Water Board v. Libbey*, [1911] 2 K. B. 74; 75 J. P. 322; 43 Digest 1095, 254). And see *South West Suburban Water Co. v. Hardy* (1913), 77 J. P. 283; 109 L. T. 169; 43 Digest 1084, 184.

THE OPEN SPACES ACT, 1887.

(50 & 51 VICT. c. 32) (a).

An Act for extending certain Provisions of the Metropolitan Open Spaces Acts, 1877 and 1881, with Amendments, to Sanitary Districts throughout England, Wales, and Ireland; and for other purposes.

[23rd August, 1887.]

* * * * *

4. In the Disused Burial Grounds Act, 1884 (b), and in this Act, the expression "burial ground" shall have the same meaning as in the Metropolitan Open Spaces Act, 1881, as amended by this Act, and the expression "disused burial ground" shall mean any burial ground which is no longer used for interments, whether or not such ground shall have been partially or wholly closed for burials under the provisions of any statute or Order in Council, and the expression "building" shall include any temporary or movable building (c). Amendment of 47 & 48 Vict. c. 72.

(a) This Act extended to urban and rural districts, the provisions of the Acts in force in the metropolis relating to open spaces, viz., Metropolitan Open Spaces Act, 1877, and Metropolitan Open Spaces Act, 1881, and this Act was extended by Open Spaces Act, 1890. It is now, however, repealed, except so much of s. 4 as amends the Disused Burial Grounds Act, 1884, *ante*, p. 4694, by s. 23, and Schedule of the Open Spaces Act, 1906, *post*, p. 5025, which also wholly repeals Metropolitan Open Spaces Act, 1877, and Metropolitan Open Spaces Act, 1881, and Open Spaces Act, 1890.

(b) *Ante*, p. 4694. See *In re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702; 7 Digest 552, 293. The Metropolitan Open Spaces Act, 1881, as amended by this Act (now consolidated in the Open Spaces Act, 1906, *post*, p. 5016), defined "burial ground" as any ground whether consecrated or not which has been at any time *set apart* for the purposes of interment. As to the meaning of the words "set apart," see *Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454; 7 Digest 551, 291. If at the time land was so set apart there was in force an Order in Council prohibiting the opening of any new burial ground in the district so that it could never lawfully be used for the purposes for which it was set apart, such land was, nevertheless, a "disused burial ground" within the definition (*Re Bosworth and Gravesend Corporation*, [1905] 2 K. B. 426; 69 J. P. 337; 7 Digest 540, 204). Doubt was, however, expressed as to the correctness of these two decisions in *Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214; 131 L. T. 634; Digest Supp. In that case it was held that land purchased for use as a burial ground but found unfit and so never fenced off, or consecrated or used for interment had not been "set apart" for the purposes of interment. This last named case was, however, distinguished and the earlier case followed in *London C. C. v. Greenwich Corporation*, [1929] 1 Ch. 305; 93 J. P. 123; Digest Supp.

(c) Urinals were held to be buildings, but a tool shed for use in connection with the maintenance of the disused burial ground as an open space was held not to be a building within this definition (*Bermondsey B. C. v. Mortimer*, [1926] P. 87; Digest Supp. An underground transformer chamber was held to be a building so as to infringe s. 4 of the 1884 Act (*St. Nicholas Acons (Rector and Churchwardens) v. London C. C.*, [1928] A. C. 469; 92 J. P. 185; Digest Supp.). See also the cases cited in note (a) to s. 3 of the Act of 1884, *ante*, p. 4695.

* * * * *

Section 1.

THE PUBLIC WORKS LOANS ACT, 1887.

(50 & 51 VICT. c. 37) (a).

An Act to grant money for the purpose of certain Local Loans; and for other purposes relating to Local Loans. [16th September, 1887.]

Short title.

1. This Act may be cited as "The Public Works Loans Act, 1887."

(a) A list of the other Public Works Loans Acts will be found, *ante*, p. 4544. The rest of this Act relates to the grant of moneys by Parliament for the year and to purely local matters. Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

* * * * *

Power for certain local authorities to guarantee harbour loans. 45 & 46 Vict. c. 62.

4. *Whereas under section seven of the Public Works Loans Act, 1882 (a), provision may be made for enabling any rating authority as therein defined to charge any fund or rate under their control for the purpose of aiding a public body in raising a loan for the construction of a harbour, pier, or other similar works, and it is expedient to extend the provisions of that section to certain other rating authorities: Be it therefore enacted that the expression "rating authority" as defined in that section shall include:*

(1) As regards England—

38 & 39 Vict. c. 55.

(a) Any authority being a rural sanitary authority under the Public Health Act, 1875, and the Acts amending the same; and

(b) *any justices in quarter sessions assembled and any representative county body which may be hereafter created by Act of Parliament.*

(a) See this section, *ante*, p. 4662.

* * * * *

THE ELECTRIC LIGHTING ACT, 1888.

(51 & 52 VICT. c. 12) (a).

An Act to amend the Electric Lighting Act, 1882. [28th June, 1888.]

Consent of local authority generally required to Provisional Order for supply of electricity.

1. Notwithstanding anything in the Electric Lighting Act, 1882, no Provisional Order (b) authorising the supply of electricity by any undertakers within the district of any local authority shall be granted by the Board of Trade (c) except with the consent of such local authority, unless the Board of Trade (c), in any case in which the consent of such local authority is refused, are of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent. The grant of authority to any undertakers to supply electricity within any area, whether granted by licence or by means of a Provisional Order, shall not in any way hinder or restrict the granting of a licence or Provisional Order to the local authority, or to any other company or person within the same area (d).

(a) This Act amends the Electric Lighting Act, 1882, *ante*, p. 4642. See also the Electric Lighting Clauses Act, 1899, *post*, p. 4949, the Electric Lighting Act, 1909, *post*, p. 5096, and the Electricity (Supply) Acts, 1919, 1922, *post*, p. 5245 and Vol. V., *post*; 1926, 1928, Vol. V. and 7 Halsbury's Statutes 792, 826; 1933, 1935 and 1936, 26, 28, 29 Halsbury's Statutes 137, 51, 133. All these Acts with the exception of the Electric Lighting Clauses Act, 1899, are to be read as one and may be referred to as the Electricity Supply Acts, 1882–1936. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

(b) Anything which could be effected by a Provisional Order may now be effected by a special Order or (in the case of a joint electricity authority) by an Order, and references in this Act to Provisional Orders now include references to such a special Order or Order

except as regards paragraphs (1) to (4) of s. 4 of the Act of 1882, *ante*, p. 4645 (see s. 26 of the Electricity (Supply) Act, 1919, *post*, p. 5260).

(c) Now the Ministry of Transport (see note (a) to s. 1 of the 1882 Act, *ante*, p. 4643).

(d) The first part of this section amended s. 4 of the Act of 1882, *ante*, p. 4645, which enabled the Board of Trade (now Minister of Transport) to authorise any local authority, company, or person to supply electricity within any area without requiring such consents as are required to the granting of a licence. These consents are enumerated in s. 3 of the Act of 1882, *ante*, p. 4643, and included the consent of the local authority; but save as is provided by the Electricity (Supply) Act, 1919, *q.v. post*, p. 5243, the consent of the local authority will now be necessary in every case, unless dispensed with by the Minister of Transport for special reasons. As to the "local authority," see the Schedule to the Act of 1882, *ante*, p. 4660, and s. 4 (5), *post*, p. 4703. The latter part of the section provides, in effect, that a licence or Provisional Order shall not confer a monopoly to supply electricity. *Cf. Hull Electric Co. v. Ottawa Electric Co.*, [1902] A. C. 237; 20 Digest 199, *a*, but see s. 23 of the Electric Lighting Act, 1909, *post*, p. 5103, prohibiting competition by unauthorised undertakers; and see now the provisions of the Electricity (Supply) Acts, 1919, 1922, *post*, p. 5245 and Vol. V., *post*, and 1926, Vol. V. and 7 Halsbury's Statutes 792.

Note to Section 1.

2. *Section twenty-seven of the Electric Lighting Act, 1882, is hereby repealed, and in lieu thereof the following provisions shall have effect; that is to say, (a)*

Repeal of
45 & 46 Vict.
c. 56, s. 27.

Where any undertakers are authorised by a Provisional Order or a special Act to supply electricity within any area, any local authority within whose jurisdiction such area or any part thereof is situated may, within six months after the expiration of a period of forty-two years (b), or such shorter period as is specified in that behalf in the Provisional Order or in the special Act, from the date of the passing of the Act confirming such Provisional Order, or of such special Act, and within six months after the expiration of every subsequent period of ten years (c), or such shorter period as is specified in that behalf in the Provisional Order or in the special Act, by notice in writing require such undertakers to sell, and thereupon such undertakers shall sell to them their undertaking, or so much of the same as is within such jurisdiction, upon terms of paying the then value of all lands, buildings, works, materials, and plant of such undertakers suitable to and used by them for the purposes of their undertaking within such jurisdiction, such value to be in case of difference determined by arbitration: Provided that the value of such lands, buildings, works, materials, and plant shall be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working (d), and to the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance; but without any addition in respect of compulsory purchase, or of goodwill, or of any profits which may or might have been or be made from the undertaking, or of any similar considerations (e). The Board of Trade (f) may determine any other questions which may arise in relation to such purchase, and may fix the date from which such purchase is to take effect, and from and after the date so fixed, or such other date as may be agreed upon between the parties, all lands, buildings, works, materials, and plant so purchased as aforesaid shall vest in the local authority which has made the purchase, freed from any debts, mortgages, or similar obligations of such undertakers or attaching to the undertaking, and the powers of such undertakers in relation to the supply of electricity under this Act or such Provisional Order or special Act as aforesaid within such area or part thereof as aforesaid shall absolutely cease and determine, and shall vest in the local authority aforesaid (g).

Purchase of
undertaking by
local authority.

**Note to
Section 2.**

- (a) Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).
 (b) In the repealed section, this period was twenty-one years.
 (c) In the repealed section, this period was seven years.
 (d) These words from "and to the circumstance" are an addition to the words of the repealed section. See as to the principle of this addition the judgment of Lord HERSHELL in the analogous case of the purchase of a water supply undertaking in *Stockton and Middlesbrough Water Board v. Kirkleatham L. B.*, [1895] A. C. 444, at pp. 449, 450; 57 J. P. 772; 43 Digest 1060, 26. This case was distinguished in a colonial case, *Perth Gas Co., Ltd. v. Perth Corporation*, [1911] A. C. 506, at p. 514; 25 Digest 493, a.
 (e) As to capital expenditure subsequent to the notice to treat, see *Metropolitan Electric Supply v. Marylebone Corporation* (1903), 67 J. P. 382; 1 L. G. R. 673; Digest Supp.
 (f) Now the Minister of Transport, see note (a) on p. 4643, *ante*.
 (g) The undertakers' powers vest in the purchasers by virtue of this provision and not as a result of any transfer from the undertakers (*Edinburgh Street Tramways Co. v. Edinburgh Corporation*, [1894] A. C. 456; 43 Digest 354, 113). Section 30, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 815, makes provision for the purchase of companies with large areas of supply and excludes this and the following section. See also ss. 40 and 41, Vol. V. and 7 Halsbury's Statutes 816, 817, of that Act which alter the terms of purchase in respect of a company taking a bulk supply under the Act and in all cases authorises an alteration of the statutory terms of purchase by agreement. See s. 7 of the Electric Lighting Act, 1909, *post*, p. 5099, as to the purchase of generating stations, works and mains situated outside the district or districts supplied by the undertakers. See the same section as to one authority transferring its powers of purchase to another authority supplied by the undertakers. See now also ss. 12(2) and 13 of the Electricity (Supply) Act, 1919, *post*, p. 5248, and s. 14 of the Electricity (Supply) Act, 1922, Vol. V., *post*. A Provisional Order gave a corporation power to purchase compulsorily the undertaking of an electric lighting company, upon the terms of issuing to the company such an amount of corporation stock as would produce in dividends an annuity of 5 per cent. upon the capital properly expended by the company. By another Provisional Order the power of the corporation to issue irredeemable stock was taken away. The Acts confirming these Orders received the Royal Assent on the same day:—*Held*, that the stock to be issued to the company was irredeemable stock; that the corporation had no longer, even by implication, power to issue such stock; and that consequently their power of compulsory purchase could not be enforced (*Sheffield Corporation v. Sheffield Electric Light Co.*, [1898] 1 Ch. 203; 62 J. P. 87; 20 Digest 216, 104). As to stamp duty on a purchase of an electric light undertaking, see *Eastbourne Corporation v. Att.-Gen.*, [1904] A. C. 155; 68 J. P. 393; 20 Digest 216, 105. As to the assessment of the price to be paid, see *Oxford Corporation v. Oxford Electric Co., Ltd.* (1930), 94 J. P. 229; Digest Supp.

Power to vary terms of sale contained in last section.

3. Notwithstanding anything in the last preceding section contained, the Board of Trade (a) may by any Provisional Order to be made by them under the Electric Lighting Act, 1882, if they think fit, vary the terms upon which any local authority may require the undertakers to sell, and upon which the undertakers shall be required to sell to such local authority their undertaking or so much of the same as is within the jurisdiction of such local authority under the said section, in such manner as may have been agreed upon between such local authority and the undertakers (b).

(a) Now the Minister of Transport, see note (a) on p. 4643, *ante*.

(b) See also s. 6 of Electricity (Supply) Act, 1919, *post*, p. 5245; s. 14 of the Electricity (Supply) Act, 1922, Vol. V., *post*; and ss. 39 and 41 of the Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 815, 817, and note (g) to s. 2, *supra*.

Restriction as to placing of electric lines, etc

4.—(1) Where in any case any electric line or other work may have been laid down or erected in, over, along, across, or under any street, for the purpose of supplying electricity, or may have been laid down or erected in any other position for such purpose in such a manner as not to be entirely enclosed within any building or buildings, or where any electric line or work so laid down or erected may be used for such purpose otherwise than under and subject to the provisions of a licence, order, or special Act, the Board of Trade (a), if they think fit, may, by notice in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade (a), to be served upon the body or person owning or using or entitled to use such electric line or work, require that such electric line or work shall be continued and used only in accordance with such conditions and subject to such regulations for the protection of the public safety and of the electric lines and works of the

Section 4.

Postmaster-General (*b*), and of other electric lines and works lawfully placed in any position and used for telegraphic communication (*c*), as the Board of Trade (*a*) may by or in pursuance of such notice prescribe, and in case of non-compliance with the said regulations, then the Board of Trade (*a*) may require such body or person to remove such electric line or work: Provided that nothing in this sub-section shall apply to any electric line or work laid down or erected by any body or person for the supply of electricity generated upon any premises occupied by such body or person to any other part of such premises (*d*).

(2) Where in any case any electric line or work is used for the supply of electricity in such a manner as to injuriously affect any telegraphic line of the Postmaster-General (*b*), or to affect the telegraphic communication through any such line, the Postmaster-General may, by notice to be served upon the body or person owning or using or entitled to use such electric line or work, require that such supply be continued only in accordance with such conditions and regulations for the protection of the telegraphic lines of the Postmaster-General and the telegraphic communication through the same as he may by or in pursuance of such notice prescribe, and in default of compliance with such conditions and regulations the Postmaster-General may require that the supply of electricity through such electric line or work shall be forthwith discontinued: Provided that nothing in this sub-section shall apply to the supply of electricity through any electric line or work laid down or erected under and subject to the provisions of any licence, order, or special Act, or which may be used in accordance with any conditions or regulations prescribed by the Board of Trade (*a*) by or in pursuance of any notice given by them under this section.

(3) If any body or person fails to comply with the requirements of any notice which may be served upon them or him under this section, such body or person shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recovered summarily, and any court of summary jurisdiction, on complaint made, may make an order directing and authorising the removal of any electric line or work specified in such notice by such person and upon such terms as they may think fit.

(4) Any notice authorised to be served under this section upon any body or person may be served by the same being addressed to such body or person, and being left at or transmitted through the post to any office of such body or the usual or last known place of abode of such person; and any notice so served by post shall be deemed to have been served at the time when the letter containing the notice would be delivered in the usual course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

(5) In this section terms and expressions to which by the Electric Lighting Act, 1882, meanings are assigned shall have the same respective meanings, provided that the term "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place whatever, and the expression "telegraphic line" shall have the meaning assigned to it by the Telegraph Act, 1878 (*e*). 45 & 46 Vict.
c. 56.

(6) Nothing in this section shall apply to any electric line or work of the Postmaster-General, or to any other electric line or work used or to be used solely for telegraphic purposes, except by way of protection, as in this section provided. 41 & 42 Vict.
c. 76.

(*a*) Now the Minister of Transport, see note (*a*) on p. 4643, *ante*.

(*b*) As to the protection of the Postmaster-General, see also s. 26 of the Electric Lighting Act, 1882, *ante*, p. 4656, as amended by s. 25 of the Electricity (Supply) Act, 1919, *post*, p. 5260, and Sched. (14) (79) of the Electric Lighting Clauses Act, 1899, *post*, pp. 4956, 4980.

(*c*) As to electric trams, see *National Telephone Co. v. Baker*, *ante*, p. 4658.

(*d*) This sub-section is limited in its application to wires laid down by any company or person without statutory authority. The Electricity Commission have made regulations under it, and these regulations will be found *ante*, p. 2621. The wires to which this

**Note to
Section 4.**

sub-section relates would, apparently, be subject to Part II. of the P. H. A. Amendment A., 1890, *post*, p. 4807, or s. 25 of the P. H. A., 1925; 13 Halsbury's Statutes 1123.

(e) See the interpretation clauses in the Act of 1882, ss. 31, 32, *ante*, p. 4658.

The Telegraph Act, 1878, s. 2 (19 Halsbury's Statutes 261), defines a telegraphic line to mean telegraph posts, and any work (within the meaning of the Telegraph Act, 1863; *op. cit.*, 219), and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever, used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion of a telegraphic line as defined by that Act. By s. 3 of the Telegraph Act, 1863 (*op. cit.*), the term "work" includes telegraphs and posts.

Short title.

5. This Act may be cited as the Electric Lighting Act, 1888; and the Electric Lighting Act, 1882, and this Act shall be read and construed together as one Act, and may be cited together for all purposes as the Electric Lighting Acts, 1882 and 1888.

THE GLEBE LANDS ACT, 1888.

(51 & 52 VICT. c. 20) (a).

An Act to facilitate the sale of Glebe Lands.

[7th August, 1888.]

**Short title and
extent.**

1. This Act may be cited as the Glebe Lands Act, 1888.
This Act shall not extend to Scotland or Ireland.

* * * * *

**Supplemental
provisions as to
sale.**

8.—(1) For the purpose of facilitating the acquisition of land by cottagers, labourers, and others, it shall be the duty of the Land Commissioners (b) in giving their approval of a sale under this Act (c), either to require as a condition thereof that the land or some part thereof shall be offered for sale in small parcels, or to the sanitary authority of a sanitary district for the purposes of the Allotments Act, 1887, or to satisfy themselves that such offer is not practicable without diminishing the price which can be obtained for the glebe land on a sale (d).

(2) Before approving of a sale under this Act of glebe land of any benefice, the Land Commissioners (b) shall require such notice of the proposed sale to be given as they think sufficient to give information thereof to the parishioners (e).

(3) The approval of the Land Commissioners (b) of a sale under this Act may be signified in the prescribed manner, and shall be conclusive evidence that the requirements of this Act with respect to the sale have been complied with.

**45 & 46 Vict.
c. 38.**

(4) Subject to the provisions of this Act, the provisions of the Settled Land Act, 1882, with respect to the sale of land by a tenant for life shall, so far as circumstances admit, apply to a sale under this Act by an incumbent in like manner as if he were the tenant for life of the land, and accordingly he shall have the like power with respect to contracts as a tenant for life under that Act, and may do all things necessary and proper for carrying into effect a sale under this Act (f).

(a) This Act is included in the present Work only by reason of the provision in s. 8 relating to the sale of some of the land to which it applies to sanitary authorities for the purpose of allotments.

(b) Now the Minister of Agriculture and Fisheries. See note (a), *ante*, p. 4568.

(c) This refers to a sale of glebe land under the Act.

(d) See Sale of Glebe Land Rules, 1897, rr. 5, 7, and Stat. R. & O., 1897, p. 9.

(e) See Sale of Glebe Land Rules, 1897, r. 1 and Form 4, Stat. R. & O., 1897, pp. 8, 14.

(f) The Settled Land Act, 1882 (10 Halsbury's Statutes 164), is now replaced by the Settled Land Act, 1925 (17 Halsbury's Statutes 833). As to the powers of a tenant for life under that Act, see Part II., *ibid.* (op. cit. 877).

* * * * *

Section 1.

THE RAILWAY AND CANAL TRAFFIC ACT, 1888.

(51 & 52 Vict. c. 25) (a).

An Act for the better regulation of Railway and Canal Traffic, and for other purposes.
[10th August, 1888.]

1. This Act may be cited as the Railway and Canal Traffic Act, 1888.

Short title and
construction.
36 & 37 Vict.
c. 48.

This Act shall be construed as one with the Regulation of Railways Act, 1873, and the Acts amending it; and those Acts and this Act may be cited together as the Railway and Canal Traffic Acts, 1873 and 1888

(a) This Act confers certain powers of making complaints upon sanitary authorities. See ss. 7, *infra*, 16, 29, 31, 45 (1), (7), *post*, pp. 4707, 4714, 4715, 4718-9. Only such parts of the Act as bear directly upon such complaints have been here inserted. The Act has been extended by the Railway and Canal Traffic Act, 1894 (14 Halsbury's Statutes 251). And see also the powers given to local authorities by the Railways Act, 1921 (*op. cit.* 316). By that Act the jurisdiction of the Railway and Canal Commissioners in respect of certain matters connected with railway rates has been transferred to the Railway Rates Tribunal. See s. 78 of the Act of 1921 (*op. cit.* 368), which makes provision for application by public authorities in certain cases, and *Southend Corporation v. L. M. & S. Rail.* (1927), 19 Ry. & Can. Tr. Cas. 216; Digest Supp., decided under that Act.

PART I.

COURT AND PROCEDURE OF RAILWAY AND CANAL COMMISSIONERS.

Establishment of Railway and Canal Commission.

* * * * *

7.—(1) Any of the following authorities, that is to say—

Provision for
complaints by
public authority
in certain cases.

(a) any of the following local authorities, namely, any harbour board, or conservancy authority, the Common Council of the City of London, any council of a city or borough, any representative county body *which may be created by an Act passed in the present or any future session of Parliament, any justices in quarter sessions assembled, the Commissioners of Supply of any county in Scotland, the Metropolitan Board of Works* (b) or any urban sanitary authority not being a council as aforesaid, or any rural sanitary authority (b); or

may make to the Commissioners any complaint which the Commissioners have jurisdiction to determine (c), and may do so without proof that such authority is aggrieved by the matter complained of, and any of such authorities may appear in opposition to any complaint which the Commissioners have jurisdiction to determine in any case where such authority, or the persons represented by them, appear to the Commissioners to be likely to be affected by any determination of the Commissioners upon such complaint.

(a) Italicised words repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

(b) For an example of a complaint by a local authority, see *Maidstone Town Council v. S. E. Rail. Co. and L. C. & D. Rail. Co.* (1891), 7 Ry. & Can. Tr. Cas. 99. See also *West Sussex C. C. v. L. B. & S. C. Rail. Co.*, Times, February 24th, 1892.

(c) As to the complaints which the Commissioners have power to determine, see s. 8 and succeeding sections, especially s. 9, and ss. 1 and 4 of the Railway and Canal Traffic Act, 1894. See also *Darlaston L. B. v. L. & N. W. Rail Co.*, [1894] 2 Q. B. 694; 38 Digest 296, 263; overruling *Wingsford L. B. v. Cheshire Lines Committee* (1890), 24 Q. B. D. 456; 38 Digest 361, 641. See also s. 54, *post*, p. 4720, as to the costs of local authorities.

Section 8.

Jurisdiction.

Jurisdiction of
railway com-
missioners
transferred to
the commission.

8. There shall be transferred to and vested in the Commissioners all the jurisdiction and powers which at the commencement of this Act were vested in, or capable of being exercised by the Railway Commissioners, whether under the Regulation of Railways Act, 1873, or any other Act, or otherwise, and any reference to the Railway Commissioners in the Regulation of Railways Act, 1873, or in any other Act (*a*), or in any document, shall, *from and after the commencement of this Act (b)*, be construed to refer to the Railway and Canal Commission established by this Act.

- (*a*) Especially the Railway and Canal Traffic Act, 1854 (14 Halsbury's Statutes 107).
(*b*) Italicised words repealed by S. L. R. A., 1908.

Jurisdiction of
Commissioners
under special
Acts.
17 & 18 Vict.
c 81.

9. Where any enactment in a special Act—

- (*a*) contains provisions relating to traffic facilities, undue preference, or other matters mentioned in section two of the Railway and Canal Traffic Act, 1854 (*a*), or
(*b*) requires a company to which this Part of this Act applies to provide any station, road, or other similar work for public accommodation, or
(*c*) otherwise imposes on a company to which this Part of this Act applies any obligation in favour of the public or any individual,

or where any Act contains provisions relating to private branch railways or private sidings, the Commissioners shall have the like jurisdiction to hear and determine a complaint of a contravention of the enactment as the Commissioners have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

- (*a*) See this section recited at length in s. 25, *post*, p. 4711.

Jurisdiction
over tolls and
rates.

10. Where any question or dispute arises, involving the legality of any toll, rate, or charge, or portion of a toll, rate, or charge, charged or sought to be charged for merchandise traffic by a company to which this Part of this Act applies, the Commissioners shall have jurisdiction to hear and determine the same, and to enforce payment of such toll, rate, or charge, or so much thereof as the Commissioners decide to be legal (*a*).

- (*a*) See as to the jurisdiction of the commissioners under this section, *Ward v. Midland Rail. Co.* (1916), 33 T. L. R. 4, affirmed, [1917] 2 K. B. 278; 33 T. L. R. 283; 38 Digest 374, 755.

Jurisdiction to
order traffic
facilities,
notwithstand-
ing agreements.

11. Nothing in any agreement, whether made before or after the passing of this Act, which has not been confirmed by Act or by the Board of Trade, or by the Commissioners under the Regulation of Railways Acts, 1873, or this Act, shall render a company to which this Part of this Act applies unable to afford, or shall authorise such company to refuse, such reasonable facilities for traffic as may in the opinion of the Commissioners be required in the interests of the public, or shall prevent the Commissioners from making or enforcing any order with respect to such facilities.

Power to award
damages.

12. Where the Commissioners have jurisdiction to hear and determine any matter, they may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as they find him to have sustained; and such award of damages shall be in complete satisfaction of any claim for damages, including repayment of overcharges, which, but for this Act, such party would have had by reason of the matter of complaint:

Provided that such damages shall not be awarded unless complaint has been made to the Commissioners within one year from the discovery by the party aggrieved of the matter complained of.

The Commissioners may ascertain the amount of such damages either by **Section 12.** trial before themselves, or by directing an inquiry to be taken before one or more of themselves or before some officer of their court.

13. In cases of complaint of undue preference no damages shall be awarded if the Commissioners shall find that the rates complained of have, for the period during which such rates have been in operation, been duly published in the rate books of the railway company kept at their stations in accordance with section fourteen of the Regulation of Railways Act, 1873, as amended by this Act (a), unless and until the party complaining shall have given written notice to the railway company requiring them to abstain from or remedy the matter of complaint, and the railway company shall have failed, within a reasonable time, to comply with such requirements in such a manner as the Commissioners shall think reasonable.

No damages where rates published under certain conditions.

(a) Section 34 of this Act amends s. 14 of the Act of 1873 (14 Halsbury's Statutes 203) as to the place of publication of rates in respect of traffic at places other than stations. Section 14 of the Regulation of Railways Act, 1873, is extended by s. 3 of the Railway and Canal Traffic Act of 1894 (*op. cit.* 252).

* * * * *

16.—(1) Where the Board of Trade (a) or the Commissioners, in the exercise of any power given by any general or special Act, on application order a company to which this Part of this Act applies, to provide a bridge, subway, or approach, or any work of a similar character, the Board of Trade (a) or the Commissioners, as the case may be, may require as a condition of making the order that an agreement to pay the whole or a portion of the expenses of complying with the order shall be entered into by the applicants or some of them, or such other persons as the Board of Trade (a) or Commissioners think fit, and any of the following local authorities, namely, any sanitary authority (b), highway board, surveyor of highways acting with the consent of the vestry of his parish, or any other authority having power to levy rates, shall have power, if such authority think fit, to enter into any such agreement as is sanctioned by the Board of Trade (a) or Commissioners for the purpose of the order.

Power to apportion expenses between railway company and applicants for works.

(2) In such case any question respecting the persons by whom or the proportions in which the expenses of complying with the order are to be defrayed may, on the application of any party to the application, or on a certificate of the Board of Trade (a), be determined by the Commissioners.

(3) In this section the expression "parish" shall have the same meaning as the same expression has in the Acts relating to highways; and the expression "the consent of the vestry of his parish" shall, in any place where there is no vestry meeting, mean the consent of a meeting of inhabitants contributing to the highway rates, provided that the same notice shall have been given of such a meeting as would be required by law for the assembling of a meeting in vestry.

(a) The powers of the Board of Trade are now vested in the Ministry of Transport (Ministry of Transport Act, 1919, *post*, p. 5195).

(b) See also powers conferred on urban sanitary authorities under s. 147 of the P. H. A., 1875, *ante*, p. 4368. Reference should also be made to the Bridges Act, 1929, Vol. V. and 9 Halsbury's Statutes 268.

Appeals.

17.—(1) No appeal shall lie from the Commissioners upon a question of fact (a), or upon any question regarding the locus standi of a complainant.

Appeals on certain questions to superior court of appeal.

(2) Save as otherwise provided by this Act, an appeal shall lie from the Commissioners to a superior court of appeal.

(3) An appeal shall not be brought except in conformity with such rules of court as may from time to time be made in relation to such appeals by

Section 16. the authority having power to make rules of court for the superior court of appeal (b).

(4) On the hearing of an appeal the court of appeal may draw all such inferences as are not inconsistent with the facts expressly found, and are necessary for determining the question of law, and shall have all such powers for that purpose as if the appeal were an appeal from a judgment of a superior court, and may make any order which the Commissioners could have made, and also any such further or other order as may be just, and the costs of and incidental to an appeal shall be in the discretion of the court of appeal, but no Commissioner shall be liable to any costs by reason or in respect of any appeal.

(5) The decision of the superior court of appeal shall be final: Provided that where there has been a difference of opinion between any two of such superior courts of appeal, and superior court of appeal in which a matter affected by such difference of opinion is pending may give leave to appeal to the House of Lords, on such terms as to costs as such court shall determine.

(6) Save as provided by this Act, an order or proceeding of the Commissioners shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, certiorari, or otherwise, either at the instance of the Crown or otherwise.

(a) See *Vickers, Sons and Maxim, Ltd. v. Midland Rail. Co.* (1902), 18 T. L. R. 769; 38 Digest 368, 702; *National Telegraph Co., Ltd. v. Postmaster-General*, [1913] A. C. 546; 38 Digest 370, 721.

(b) See R. S. C., Order LVIII., r. 19A, applying R. S. C., Order LVIII.

Supplemental.

General powers
and enforce-
ment of orders.

18.—(1) For the purposes of this Act the Commissioners shall have full jurisdiction to hear and determine all matters whether of law or of fact, and shall as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of their orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of their jurisdiction under this Act, or otherwise for carrying this Act into effect, have all such powers, rights, and privileges as are vested in a superior court: Provided that no person shall be punished for contempt of court, except with the consent of an ex-officio Commissioner.

(2) The Commissioners may review and rescind or vary any order made by them; but, save as is by this Act provided, every decision or order of the Commissioners shall be final.

Costs.

19. The costs of and incidental to every proceeding before the Commissioners shall be in the discretion of the Commissioners, who may order by whom and to whom the same are to be paid, and by whom the same are to be taxed and allowed (a).

(a) But see the Railway and Canal Traffic Act, 1894, s. 2 (14 Halsbury's Statutes 251); and see *Cheshire Lines Committee v. Butler & Co., Ltd.* (1917), 33 T. L. R. 565; 38 Digest 371, 727.

Power to make
rules.

20.—(1) The Commissioners may from time to time, with the approval of the Lord Chancellor and the President of the Board of Trade, make, rescind, and vary general rules for their procedure and practice under this Act, and generally for carrying into effect this Part of this Act.

(2) All rules made under this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if they were enacted by this Act (a).

(a) See the Railway and Canal Commission Rules, 1924 (S. R. & O., 1924, No. 1400).

* * * * *

23. This Part of this Act shall apply to any railway company, and to any canal company, and to any railway and canal company. **Section 23.**

Company to
which Part
applies.

PART II.

TRAFFIC (a).

24.—(1) Notwithstanding any provision in any general or special Act, every railway company shall submit to the Board of Trade a revised classification of merchandise traffic, and a revised schedule of maximum rates and charges applicable thereto, proposed to be charged by such railway company, and shall fully state in such classification and schedule the nature and amounts of all terminal charges proposed to be authorised in respect of each class of traffic, and the circumstances under which such terminal charges are proposed to be made. In the determination of the terminal charges of any railway company regard shall be had only to the expenditure reasonably necessary to provide the accommodation in respect of which such charges are made, irrespective of the outlay which may have been actually incurred by the railway company in providing that accommodation. Revised classification of traffic and schedule of rates.

(2) The classification and schedule shall be submitted within six months from the passing of this Act, or such further time as the Board of Trade may, in any particular case, permit, and shall be published in such manner as the Board of Trade may direct (b).

(3) The Board of Trade shall consider the classification and schedule, and any objections thereto, which may be lodged with them on or before the prescribed time, and in the prescribed manner, and shall communicate with the railway company and the persons (if any) who have lodged objections, for the purpose of arranging the differences which may have arisen.

(4) If, after hearing all parties whom the Board of Trade consider to be entitled to be heard before them respecting the classification and schedule, the Board of Trade come to an agreement with the railway company as to the classification and schedule, they shall embody the agreed classification and schedule in a Provisional Order, and shall make a report thereon, to be submitted to Parliament, containing such observations as they think fit in relation to the agreed classification and schedule.

(5) When any agreed classification and schedule have been embodied in a Provisional Order, the Board of Trade, as soon as they conveniently can after the making of the Provisional Order (of which the railway company shall be deemed to be the promoters), shall procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill.

(6) In any case in which a railway company fails within the time mentioned in this section to submit a classification and schedule to the Board of Trade, and also in every case in which a railway company has submitted to the Board of Trade a classification and schedule, and after hearing all parties whom the Board of Trade consider to be entitled to be heard before them, the Board of Trade are unable to come to an agreement with the railway company as to the railway company's classification and schedule, the Board of Trade shall determine the classification of traffic which, in the opinion of the Board of Trade, ought to be adopted by the railway company, and the schedule of maximum rates and charges, including all terminal charges proposed to be authorised applicable to such classification which would, in the opinion of the Board of Trade, be just and reasonable, and shall make a report, to be submitted to Parliament, containing such observations as they may think fit in relation to the said classification and schedule, and calling

Section 24. attention to the points therein on which differences which have arisen have not been arranged.

(7) After the commencement of the session of Parliament next after that in which the said report of the Board of Trade (*b*) has been submitted to Parliament, the railway company may apply to the Board of Trade (*b*) to submit to Parliament the question of the classification and schedule which ought to be adopted by the railway company, and the Board of Trade (*b*) shall on such application, and in any case may embody in a Provisional Order such classification and schedule as in the opinion of the Board of Trade (*b*) ought to be adopted by the railway company, and procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill.

(8) If, while any Bill to confirm a Provisional Order made by the Board of Trade (*b*) under this section is pending in either House of Parliament, a petition is presented against the Bill or any classification and schedule comprised therein, the Bill, so far as it relates to the matter petitioned against, shall be referred to a select committee, or if the two Houses of Parliament think fit so to order, to a joint committee of such Houses, and the petitioner shall be allowed to appear and oppose as in the case of a private Bill (*c*).

(9) In preparing, revising, and settling the classifications and schedules of rates and charges, the Board of Trade (*b*) may consult and employ such skilled persons as they may deem necessary or desirable; and they may pay to such persons such remuneration as they may think fit and as the Treasury may approve.

(10) The Act of Parliament confirming any Provisional Order made under this section shall be a public general Act, and the rates and charges mentioned in a Provisional Order as confirmed by such Act shall, from and after the Act coming into operation, be the rates and charges which the railway company shall be entitled to charge and make.

(11) At any time after the confirmation of any Provisional Order under this section any railway company may, and any person, upon giving not less than twenty-one days notice to the railway company may, apply in the prescribed manner to the Board of Trade (*b*) to amend any classification and schedule by adding thereto any articles, matters, or things, and the Board of Trade (*b*) may hear and determine such application, and classify and deal with the articles, matters, or things referred to therein in such manner as the Board of Trade (*b*) shall think right (*d*). Every determination of the Board of Trade (*b*) under this sub-section shall forthwith be published in the London Gazette, and shall take effect as from the date of the publication thereof.

(12) Nothing in this section shall apply to any remuneration payable by the Postmaster-General to any railway company for the conveyance of mails, letter bags, or parcels under any general or special Act relating to the conveyance of mails, or under the Post Office (Parcels) Act, 1882.

(13) Nothing in this section shall apply to any remuneration payable by the Secretary of State for War to any railway company for the conveyance of War Office stores under the powers conferred by the Cheap Trains Act, 1883.

45 & 46 Vict.
c. 74.

46 & 47 Vict.
c. 34.

(*a*) The jurisdiction over questions of classification of merchandise is now vested in the Railway Rates Tribunal, see ss. 27 and 28 of the Railways Act, 1921 (14 Halsbury's Statutes 336). See also s. 136 and Sched. XI. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 974, 1001, as to the obligation upon railway companies to pass on the relief obtained by them in respect of rates under Pt. V., *ibid.*, Vol. V. and 10 Halsbury's Statutes 927, by means of rebates to selected traffic.

(*b*) Under s. 35 (14 Halsbury's Statutes 237) the Board of Trade had power to make rules as to the submission and publication of such classification and schedule, and made rules

**Note to
Section 24.**

accordingly. See Parl. Papers, 1888 (402), as to railways, and (436) as to canals. The Board of Trade has now as regards railways, been superseded by the Minister of Transport.

(c) The Railway and Canal Traffic (Provisional Orders) Amendment Act, 1891, *post*, p. 4827, provides that every governing body within the meaning of the Borough Funds Act, 1872 (now repealed) (10 Halsbury's Statutes 559), and every county council shall be entitled to be a petitioner, and to appear and oppose any Provisional Order made under this section, and to provide or contribute towards providing the expenses of the appearance out of rates under their control, as if the Bill were a local or personal Bill within the meaning of the Borough Funds Act, 1872. The Railway and Canal Traffic Act, 1892, *post*, p. 4840, provides that a Provisional Order may be made, and a Bill to confirm it may be introduced at any time after hearing the parties as provided in sub-s. (4).

(d) For an example of the exercise of this power by the Board of Trade, see *Ex parte L. & N. W. Rail. Co.* (1909), 100 L. T. 998.

25. (a) *Whereas by section two of the Railway and Canal Traffic Act, 1854, it is enacted that every railway company and canal company, and railway and canal company shall, according to their respective powers, afford all reasonable facilities (b) for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and that no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, or shall subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and that every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway, or canal or railway, and canal communication (c), or which have the terminus station or wharf of the one near the terminus station or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways or canals all the traffic arriving by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may by means of the railways and canals of the several companies be at all times afforded to the public in that behalf:* Provisions as in through traffic.

And whereas it is expedient to explain and amend the said enactment:

Be it therefore enacted, that—

Subject as hereinafter mentioned, the said facilities to be so afforded are hereby declared to and shall include the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any other such company, of through traffic to and from the railway or canal of any other such company at through rates, tolls, or fares (in this Act referred to as through rates) (d); and also the due and reasonable receiving, forwarding, and delivering by every railway company and canal company and railway and canal company, at the request of any person interested in through traffic, of such traffic at through rates (dd): Provided that no application shall be made to the Commissioners by such person until he has made a complaint to the Board of Trade (e) under the provisions of this Act as to complaints to the Board of Trade (e) of unreasonable charges, and the Board of Trade (e) have heard the complaint in the manner herein provided.

Provided as follows:

- (1) The company or person requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding company, stating both its amount and the route by which the

Section 25.

traffic is proposed to be forwarded; and when a company gives such notice it shall also state the apportionment of the through rate. The proposed through rate may be per truck or per ton:

- (2) Each forwarding company shall, within ten days, or such longer period as the Commissioners may from time to time by general order prescribe, after the receipt of such notice, by written notice inform the company or persons requiring the traffic to be forwarded, whether they agree to the rate and route; and if they object to either, the grounds of the objection:
- (3) If at the expiration of the prescribed period no such objection has been sent by any forwarding company, the rate shall come into operation at such expiration:
- (4) If an objection to the rate or route has been sent within the prescribed period, the matter shall be referred to the Commissioners for their decision:
- (5) If an objection be made to the granting of the rate or to the route, the Commissioners shall consider whether the granting of a rate is a due and reasonable facility in the interest of the public, and whether, having regard to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly, or fix such other rate as may seem to the Commissioners just and reasonable (*f*):
- (6) Where, upon the application of a person requiring traffic to be forwarded, a through rate is agreed to by the forwarding companies, or is made by order of the Commissioners, the apportionment of such through rate, if not agreed upon between the forwarding companies, shall be determined by the Commissioners (*g*):
- (7) If the objection be only to the apportionment of the rate, the rate shall come into operation at the expiration of the prescribed period, but the decision of the Commissioners, as to its apportionment, shall be retrospective; in any other case the operation of the rate shall be suspended until the decision is given:
- (8) The Commissioners, in apportioning the through rate, shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance, or working of the route, or any part of the route, as well as any special charges which any company may have been entitled to make in respect thereof:
- (9) It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route (*h*).

Where a railway company or canal company use, maintain, or work, or are party to an arrangement for using, maintaining, or working steam vessels for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels, and to the traffic carried thereby.

When any company, upon written notice being given as aforesaid, refuses or neglects without reason to agree to the proposed through rates, or to the route, or to the apportionment, the Commissioners, if an order is made by them upon an application for through rates, may order the respondent company or companies to pay such costs to the applicants as they think fit.

**Note to
Section 25.**

- (a) This recital is repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).
- (b) See *Darlaston L. B. v. L. & N. W. Rail. Co.*, [1894] 2 Q. B. 694; 38 Digest 296, 263. In *West Ham Corporation v. G. E. Rail. Co.* (1895), 64 L. J. Q. B. 340; 72 L. T. 395; 8 Digest 146, 965, it was held (Sir F. PEEL dissenting) that the provision of water-closets at railway stations for the use of passengers, free of charge, was not a reasonable facility for forwarding traffic which could be ordered by the Railway and Canal Commissioners under s. 2 of the Railway and Canal Traffic Act, 1854 (14 Halsbury's Statutes 108). But cloak-rooms are reasonable facilities (*Singer Manufacturing Co. v. L. & S. W. Rail. Co.*, [1894] 1 Q. B. 833; 8 Digest 220, 1398).
- (c) See *London and India Docks Co. v. G. E. Rail. Co. and Midland Co.*, [1902] 1 K. B. 568; 8 Digest 159, 1030.
- (d) See *Didcot, Newbury and Southampton Rail. Co. v. G. W. Rail. Co.*, [1897] 1 Q. B. 33; 8 Digest 164, 1061; *Port of London Authority v. Midland Rail. Co.* [1912] 2 K. B. 1; 15 Ry. & Can. Tr. Cas. 23; 38 Digest 366, 674; *Dearne Valley Ry. v. G. N. Ry.* (1914), 15 Ry. & Can. Tr. Cas. 202; Digest Supp.
- (dd) This section from this point to the end is now applicable only to canals (Railways Act, 1921, s. 86 (2), and Sched. IX., Pt. II.; 14 Halsbury's Statutes 370, 386).
- (e) See now s. 28 of the Railways Act, 1921 (*op. cit.* 336), for the jurisdiction now vested in the Railway Rates Tribunal in connection with through rates.
- (f) The applicants asked the court to allow a through rate of 1s. 2d. per ton for slack from certain collieries to their works to be forwarded in quantities of not less than 600 tons per week. The mean distance from the collieries to the works by the route proposed was twenty-four miles, while the route by which the traffic was in fact sent was thirty-four miles, and the rate charged by either route was the same, namely, 1s. 11d. per ton. It was held that in the absence of evidence to show that the proposed rate would afford any benefit to the public, the application must be refused (*Brunner, Mond & Co., Ltd. v. Cheshire Lines Committee and L. & N. W. Rail. Co.* (1909), 25 T. L. R. 618; 8 Digest 163, 1055). See also on this sub-section *L. & Y. Rail. Co. and Dearne Valley Rail. Co. v. Hull and Barnsley Rail. Co.* (1912), 15 Ry. & Can. Tr. Cas. 59; 8 Digest 161, 1043.
- (g) Where there is an agreed through rate for through traffic over the lines of two railway companies and an agreed apportionment between the two companies which has not been cancelled, the Commissioners have no jurisdiction to make a fresh apportionment of that agreed rate, or of one of the same amount at the instance of one of the companies; the duty and power of apportionment being incidental only to the fixing of reasonable facilities for the conveyance of through traffic from one point to another (*Manchester Ship Canal Co. v. L. & N. W. Rail. Co.*, [1911] 1 K. B. 657; 8 Digest 164, 1060). As to through land and sea rates, see *Great Southern & Western Ry. v. City of Cork Steam Packet Co.* (1912), 15 Ry. & Can. Tr. Cas. 67.
- (h) See hereon *L. & Y. Rail. Co. v. Hull & Barnsley Rail. Co.* (1912), 15 Ry. & Can. Tr. Cas. 59; 8 Digest 161, 1043.

26. Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is just and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly (a). Powers of Commissioners as to through rates.

(a) See as to through rates, s. 28 of the Railways Act, 1921. This section is now applicable only to canals (s. 86 (2) and Sched. IX., Pt. II., *ibid.*).

27.—(1) Whenever it is shown that any railway company charge one trader or class of traders, or the traders in any district, lower tolls, rates, or charges for the same or similar merchandise, or lower tolls, rates, or charges for the same or similar services, than they charge to other traders, or classes of traders, or to the traders in another district, or make any difference in treatment in respect of any such trader or traders, the burden of proving that such lower charge or difference in treatment does not amount to an undue preference shall lie on the railway company (a). Undue preference in case of unequal tolls, rates, and charges, and unequal services performed.

(2) In deciding whether a lower charge or difference in treatment does or does not amount to an undue preference, the court having jurisdiction in the matter, or the Commissioners, as the case may be, may, so far as they think reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge or difference in treatment is necessary for the purpose of securing in the interests of the public the traffic

Section 27. in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant: Provided that no railway company shall make, nor shall the court, or the Commissioners, sanction any difference in the tolls, rates or charges made for, or any difference in the treatment of, home and foreign merchandise, in respect of the same or similar services (b).

(3) The court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway.

(a) The effect of this section is not to limit the court in dealing with questions of alleged undue preference to the consideration whether or not the lower charge is necessary in the interests of the public (*Liverpool Corn Trade Association v. L. & N. W. Rail. Co.*, [1891] 1 Q. B. 120; 8 Digest 186, 1178. And see *Lever Brothers, Ltd. v. Midland Rail. Co.* (1909), 25 T. L. R. 491, 768; 8 Digest 184, 1171; *Holwell Iron Co., Ltd. v. Midland Rail. Co.*, [1910] 1 K. B. 296; 8 Digest 191, 1205). As to the parties to be brought before the court see *Read, Holliday & Sons, Ltd. v. Midland Rail. Co.*, [1915] 3 K. B. 616; 38 Digest 366, 670.

(b) See *Mansion House Association on Railway Traffic v. L. & S. W. Rail. Co.*, [1895] 1 Q. B. 927; 8 Digest 183, 1163.

Extension of enactments as to undue preference to goods carried by sea.

28. The provisions of section two of the Railway and Canal Traffic Act, 1854, and of section fourteen of the Regulation of Railways Act, 1873, and any enactments amending and extending those enactments, shall apply to traffic by sea in any vessels belonging to or chartered or worked by any railway company, or in which any railway company procures merchandise to be carried, in the same manner and to the like extent as they apply to the land traffic of a railway company.

Group rates to be chargeable by railway companies.

29.—(1) (a) Notwithstanding any provision in any general or special Act (b), it shall be lawful for any railway company, for the purpose of fixing the rates to be charged for the carriage of merchandise to and from any place on their railway, to group together any number of places in the same district, situated at various distances from any point of destination or departure of merchandise, and to charge a uniform rate or uniform rates of carriage for merchandise to and from all places comprised in the group from and to any point of destination or departure.

(2) Provided that the distances shall not be unreasonable, and that the group rates charged and the places grouped together shall not be such as to create an undue preference (c).

(3) Where any group rate exists or is proposed, and in any case where there is a doubt whether any rates charged or proposed to be charged by a railway company may not be a contravention of section two of the Railway and Canal Traffic Act, 1854, and any Acts amending the same, the railway company may, upon giving notice in the prescribed manner, apply to the Commissioners, and the Commissioners may, after hearing the parties interested and any of the authorities mentioned in section seven of this Act, determine whether such group rate or any rate charged or proposed to be charged as aforesaid does or does not create an undue preference. Any persons aggrieved, and any of the authorities mentioned in section seven of this Act (d), may, at any time after the making of any order under this section, apply to the Commissioners to vary or rescind the order, and the Commissioners, after hearing all parties who are interested, may make an order accordingly.

(a) See as to the jurisdiction of the Railway Rates Tribunal over group rates, s. 28 of the Railways Act, 1921 (14 Halsbury's Statutes 336).

(b) See *Davis & Sons v. Taff Vale Rail. Co.*, [1895] A. C. 542; 64 L. J. Q. B. 488; 8 Digest 194, 1233.

(c) See *Spillers, Baker & Co. v. Taff Vale Rail. Co.* (1903), 90 L. T. 713; 20 T. L. R. 101; 8 Digest 187, 1184; *Millom and Askam Hematite Iron Co. v. Furness Rail. Co. etc.* (1903), 12 Ry. & Can. Tr. Cas. 1; 8 Digest 183, 1162; *Abram Coal Co. v. G. C. Rail. Co.* (1905), 21 T. L. R. 264; 8 Digest 189, 1194.

(d) Sanitary authorities, urban and rural, are mentioned in s. 7. See the section, *ante*, p. 4705. See also as to applications by public authorities in certain cases of s. 78 of the Railways Act, 1921 (14 Halsbury's Statutes 368).

**Note to
Section 29.**

30. Any port or harbour authority or dock company which shall have reason to believe that any railway company is by its rates or otherwise placing their port, harbour, or dock, at an undue disadvantage as compared with any other port, harbour, or dock to or from which traffic is or may be carried by means of the lines of the said railway company, either alone or in conjunction with those of other railway companies, may make complaint thereof to the commissioners, who shall have the like jurisdiction to hear and determine the subject-matter of such complaint as they have to hear and determine a complaint of a contravention of section two of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts.

Power to dock companies and harbour boards to complain of undue preference.

31 (a).—(1) Whenever any person receiving or sending or desiring to send goods by any railway is of opinion that the railway company is charging him an unfair or an unreasonable rate of charge, or is in any other respect treating him in an oppressive or unreasonable manner, such person may complain to the Board of Trade.

Complaints to Board of Trade of unreasonable charges by railway companies.

(2) The Board of Trade, if they think there is reasonable ground for the complaint, may thereupon call upon the railway company for an explanation, and endeavour to settle amicably the differences between the complainant and the railway company.

(3) For the purpose aforesaid, the Board of Trade may appoint either one of their own officers or any other competent person to communicate with the complainant and the railway company, and to receive and consider such explanations and communications as may be made in reference to the complaint; and the Board of Trade may pay to such last-mentioned person such remuneration as they may think fit, and as may be approved by the Treasury.

(4) The Board of Trade shall from time to time submit to Parliament reports of the complaints made to them under the provisions of this section, and the results of the proceedings taken in relation to such complaints, together with such observations thereon as the Board of Trade shall think fit.

(5) A complaint under this section may be made to the Board of Trade by any of the authorities mentioned in section seven of the Act (b), in any case in which, in the opinion of any of such authorities, they or any traders or persons in their district are being charged unfair or unreasonable rates by a railway company; and all the provisions of this section shall apply to a complaint so made as if the same had been made by a person entitled to make a complaint under this section.

(a) This section is now applicable only to canals (Railways Act, 1921, s. 86 (2), and Sched. IX., Pt. II.; 14 Halsbury's Statutes 370, 386).

(b) See note (d) to s. 29, *supra*.

* * * * *

Section 36.

PART III.

CANALS.

Part II. to
extend to canal
companies.

36. All the provisions of Part II. of this Act relating to any railway company shall, so far as applicable, apply to every canal company, and to every railway and canal company; and in Part II. of this Act, unless the context otherwise requires, the expression "railway company" shall include a canal company and a railway and canal company, and the expression "railway" shall include a canal, and the expression "rate" shall include tolls and dues of every description chargeable for the use of any canal or by any canal company.

Application of
36 & 37 Vict.
c. 48, to canals.

37.—(1) Section fifteen of the Regulation of Railways Act, 1873, shall apply to the terminal charges of a canal company.

(2) The Railway and Canal Traffic Act, 1854, as amended by the Regulation of Railways Act, 1873, shall extend to any person whose consent is required to any variation of the rates, tolls, or dues charged for the use of any canal, or by any canal company, in like manner as if such person were a canal company, and the expressions "canal company" and "railway and canal company" in the said Acts and this Act shall be construed accordingly to include such person.

(3) The provisions of the Railway and Canal Traffic Act, 1854, and the Regulation of Railways Act, 1873, with respect to rates, shall apply to tolls and dues of every description chargeable for the use of any canal or by any canal company. And nothing in any agreement, whether made before or after the passing of this Act, and whether confirmed by Act of Parliament or not, and nothing in this Act shall prevent the Commissioners from making or enforcing any order for a through rate or toll which may in their opinion be required in the interest of the public.

(4) Any company allowing traffic to pass from a canal on to any other canal or any railway, or from a railway on to a canal, shall be deemed to be a forwarding company, and the allowing of traffic so to pass shall be deemed to be the forwarding of traffic within the meaning of the above-mentioned Acts.

(5) The provisions of the Railway and Canal Traffic Act, 1854, and of the Regulation of Railways Act, 1873, and of this Act, with respect to through rates, shall extend to any canals which, in connection with any river or other waterway, form part of a continuous line of water communication, notwithstanding that tolls may not be leviable by authority of Parliament upon such river or other waterway.

Powers of Com-
missioners over
canals, tolls,
rates, and
charges where
a railway com-
pany or its
officers own or
control the
traffic of a
canal.

38. Where a railway company, or the directors or officers of a railway company, or any of them or any persons on their behalf, have the control over, or the right to interfere in or concerning the traffic conveyed, or the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on a canal, or any part of a canal, and it is proved to the satisfaction of the Commissioners that the tolls, rates, or charges levied on the traffic of or for the conveyance of merchandise on the canal are such as are calculated to divert the traffic from the canal to the railway, to the detriment of the canal or person sending traffic over the canal or other canals adjacent to it—

(1) The Commissioners may, on the application of any person interested in the traffic of the canal, make an order requiring the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal, to be altered and adjusted in such a manner that

the same shall be reasonable as compared with the rates and charges for the conveyance of merchandise on the railway : **Section 38.**

- (2) If within such time as may be prescribed by the order of the Commissioners, the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal are not altered and adjusted as required by such order, the Commissioners may themselves by an order make such alterations in and adjustment of the tolls, rates, and charges levied on the traffic of or for the conveyance of merchandise on the canal as they shall think just and reasonable, and the tolls, rates, and charges as altered and adjusted by the order of the Commissioners shall be binding on the company or persons owning or having the control over the traffic of, or the tolls, rates, and charges levied on the traffic of, or for the conveyance of merchandise on the canal.
- (3) No application shall be made to the Commissioners under this section until the Board of Trade (a) have certified that the applicant is a fit person to make the application, and that the application is a proper one to be submitted for the adjudication of the Commissioners ; and no order shall be made by the Commissioners under this section unless notice of the application has been served upon such company and persons, and in such manner as the Board of Trade (b) may direct :
- (4) The Commissioners may at any time, upon the application of any company or person affected by any order made under this section, and after notice to and hearing such companies and persons as the Commissioners may by any general rules or special order prescribe, rescind or vary any order made under this section.

(a) Now the Ministry of Transport.

* * * * *

40.—(1) Every canal company shall, before such date as the Board of Trade (a) may prescribe, forward to the Board of Trade true copies, certified in such manner as the Board of Trade direct, of any byelaws or regulations of such company which are in force at the commencement of this Act ; and the byelaws of any canal company, copies of which are not forwarded to the Board of Trade as provided by this section, shall from and after the said date cease to have any operation, *save in so far as any penalty may have been already incurred under the same (b).* Byelaws of canal companies.

(2) A byelaw or regulation of any canal company hereafter to be made under any power which has *before or at the time of the passing of this Act (b)* been, or which may hereafter be, conferred on any canal company, shall not have any force or effect until two months after a true copy of such byelaw or regulation, certified in such manner as the Board of Trade direct, has been forwarded to the Board of Trade, unless the Board of Trade before the expiration of such period have signified their approbation thereof.

(3) The Board of Trade may, at any time after any existing or future byelaws or regulations of a canal company have been forwarded to them, notify to the company their disallowance thereof, or of any of them, and in case such byelaws or regulations are in force at the time of the disallowance, the time at which the said byelaws or regulations shall cease to be in force. A byelaw or regulation disallowed by the Board of Trade shall not after such disallowance have any force or effect whatever, *save (as regards any byelaw or regulation which may be in force at the time of the disallowance thereof) in so far as any penalty may have been then already incurred under the same.*

(4) The Board of Trade may from time to time make, rescind, and vary

Section 40. such regulations as they think fit with respect to the publication by canal companies of their byelaws and regulations, and with respect to the publication by canal companies of their intention to apply to the Board of Trade for the allowance of any intended byelaws and regulations. Any regulations so made which are for the time being in force, shall have effect as if they had been enacted in this Act.

(a) For "Board of Trade" throughout this section read "Minister of Transport" (Ministry of Transport Act, 1919, *post*, p. 5195).

(b) Italicised words repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

* * * * *

Canal companies may agree for through tolls, etc.

43.—(1) Any canal company may make and enter into contracts and arrangements with any other canal company or canal companies for the passage over and along their respective canals, or any of them, of boats, barges, vessels, and other through traffic, and, for the use by such traffic, of the wharves, landing places, and other works of any such canal, upon payment of such through tolls, rates, and charges, and subject to such conditions and restrictions as may be agreed upon between such companies; and for the collection and recovery by any one of the companies on behalf of themselves and the other companies interested of the tolls, rates, and charges payable in respect of such through traffic; and for the division and apportionment of the tolls, rates, and charges; and any such contract may contain provisions for the erection and maintenance of or otherwise for providing warehouses, offices, and other buildings and conveniences, and any other provisions for the purpose of carrying into effect any such arrangement, and any company may apply their funds or moneys for the same purpose.

(2) Notwithstanding any enactments providing for the charge of equal tolls, rates, and charges, such through tolls, rates, and charges as above mentioned may respectively be computed at a lower toll or rate per mile than the tolls, rates, or charges charged for the passage over land along the same canals of like traffic, not being through traffic, without necessitating on occasioning any reduction of the last-mentioned tolls, rates, or charges.

(3) Any like contracts and arrangements existing at the passing of this Act shall be, and from the respective dates of the making thereof shall be deemed to have been, as valid as if the same had been made after the commencement of this Act.

* * * * *

Abandonment of canal.

45.—(1) Where, on the application of a canal company, it appears to the Board of Trade (a) that any canal or part of a canal belonging to the applicants (hereinafter referred to as an unnecessary canal) is at the time of making the application unnecessary for the purposes of public navigation, or where, on the application of any local authority (b), or of three or more owners of lands adjoining or near to any canal or part of a canal, it appears to the Board of Trade that that canal or part of a canal (hereinafter referred to as a derelict canal) has for at least three years previously to the making of the application been disused for navigation, or, by reason of the default of the proprietors thereof, has become unfit for navigation, or that the lands adjoining or near thereto have suffered injury by water that has escaped from the derelict canal, and that the proprietors of the derelict canal decline or are unable to effect the repairs necessary to prevent further injury, the Board of Trade may by warrant signed by their secretary authorise the abandonment by the existing proprietors of such unnecessary canal or such derelict canal, and after the granting of the warrant, and the due publication as required by the Board of Trade of a notice of the granting thereof, the Board of Trade may make an order releasing the canal company or other the proprietors of the unnecessary or derelict canal from all liability to main-

tain the same canal, and from all statutory and other obligations in respect thereof, or of or consequent on the abandonment thereof. **Section 45.**

(2) In the case of an unnecessary canal no warrant of abandonment shall be granted unless the Board of Trade are satisfied—

- (a) That it is unnecessary for the purposes of public navigation ;
- (b) That the application has been expressly authorised by a resolution of a majority of the shareholders of the canal company owning the canal present and voting at an extraordinary or special general meeting of that company ;
- (c) That such public and other notices of the application have been given as the Board of Trade may require ;
- (d) That compensation (the amount thereof to be determined in case of difference as the Board of Trade may prescribe) has been made to all persons entitled to compensation by reason of the proposed abandonment of the canal.

(3) In the case of a derelict canal the warrant may be granted on the condition that the canal or any part thereof, with all or any of the powers relating thereto, be transferred to any person, body of persons, or local authority, and where any such condition is imposed the Board of Trade may, if they think fit, frame and embody in a Provisional Order a scheme for the management of the canal or any part thereof.

(4) The Provisional Order may provide for the constitution of a body to manage the canal or any part thereof, for the transfer to that body or any local authority of the canal or any part thereof, and of all or any of the powers relating thereto, for the limitation or discharge of any liabilities affecting the canal or the owners thereof for the time being, and for any other matters which may appear to the Board of Trade to be necessary or proper for carrying this section into effect.

(5) The Board of Trade may submit to Parliament for confirmation any Provisional Order made by it in pursuance of this section, but any such Order shall be of no force unless and until it is confirmed by Act of Parliament.

(6) If while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against any Order comprised therein, the Bill, so far as it relates to the Order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills.

(7) In this section the expression "local authority" means any one of the local authorities mentioned in section seven of this Act (c).

(8) For the purpose of giving effect to the provisions of this section, the Board of Trade may require the applicants to furnish any evidence in their possession or under their control relative to the application, and may at the expense of the applicants appoint and send an officer to inspect the canal referred to in the application, and to obtain information and evidence in the neighbourhood thereof relative to the proposed abandonment, and may from time to time make regulations as to the mode of making applications, and the nature and mode of publication of notices, and generally as to the conduct of proceedings.

(a) For "Board of Trade" here and throughout this section read "Minister of Transport" (Ministry of Transport Act, 1919, *post*, p. 5195).

(b) See sub-s. (7), *supra*.

(c) See the section, *ante*, p. 4705. The expression "local authority" includes an urban or rural district council.

46. In this Part of this Act the expression "canal company" shall include a "railway and canal company," so far as relating to any canal of any such last-mentioned company. Definition of "canal company."

Section 48.

PART IV.

MISCELLANEOUS.

* * * * *

Evidence on
rating appeals.

48. On any rating appeal (a), and before any court, where it may be material to show the receipts or profits of a railway company or canal company, or railway and canal company, it shall be lawful for the company to prove the same by written statements or returns verified by the affidavit or statutory declaration of the manager or other responsible officer, and any such statements or returns shall be *prima facie* evidence of the facts therein stated with respect to such receipts or profits : Provided that the person by whom any such affidavit or statutory declaration is made shall in every case, if required, attend to be cross-examined thereon.

(a) See the definition of this expression in s. 55, *post*, p. 4721.

* * * * *

Parties may
appear in person
or by counsel,
etc.

50. In any proceedings under this Act any party may appear before the Commissioners either by himself in person or by counsel or solicitor.

* * * * *

Saving of
powers con-
ferred on Com-
missioners and
Board of Trade.

52. The powers and jurisdiction conferred by this Act on the Commissioners or Board of Trade shall be in addition to and not in substitution for any powers and jurisdiction vested in the Commissioners or Board of Trade by any statute.

Proceedings of
Board of Trade.

53.—(1) All documents purporting to be rules, orders, or certificates made or issued by the Board of Trade (a), and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence, and deemed to be such orders, rules, or certificates without further proof, unless the contrary is shown.

(2) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of, the Board of Trade, shall be conclusive evidence of the fact so certified.

(a) The Board of Trade has now been superseded by the Minister of Transport (Ministry of Transport Act, 1919, *post*, p. 5195).

Expenses of
local autho-
rities.

54.—(1) Where any local authority having power under this Act to make or oppose any complaint to the Commissioners, or the Board of Trade, or to enter into any agreement to pay the whole or a portion of the expenses of complying with an order of the Commissioners or the Board of Trade, or to make any application for the abandonment or acquisition of a canal under this Act, incur any expenses in or incidental to such complaint, opposition, agreement, or application, such expenses may be defrayed out of the rates or funds out of which the expenses incurred by such authority in the execution of their ordinary duties are defrayed, and if such authority is a rural sanitary authority in England, shall be defrayed as general expenses, unless the Local Government Board direct that they shall be defrayed as special expenses (a).

(2) A local authority may enter into any contract involving the payment by themselves and their successors of any expenses authorised by this section to be defrayed.

(3) Where any such local authority have no power to borrow money for the purpose of defraying any expenses authorised by this section, such authority, if other than a surveyor of highways, may, with the consent of

the Board of Trade in the case of any harbour board or conservancy authority, and with the consent of the Local Government Board in the case of any other authority, borrow money in manner provided by the Local Loans Act, 1875 (*b*), on the security of the rates or funds out of which the expenses are authorised to be defrayed, and the prescribed period for the loan shall be such period as the board giving such consent may approve.

(4) On the request of any board whose consent is required for such loan, the Board of Trade or Commissioners shall certify such particulars respecting the amount of the said expenses and the propriety of incurring the same and of borrowing for the payment thereof as may be requested by such board (*c*).

(a) The expenses in the case of an urban authority will, in general, be paid out of the general rate fund. See L. G. A., 1933, ss. 185 (1), 188, *ante*, pp. 1013, 1015. As to special expenses, see s. 190 of the same Act, *ante*, p. 1016, and the R. and V. Act, 1925, *ante*, p. 2113.

(b) The text of this Act is set out, *ante*, p. 4530.

(c) The remainder of this section relates only to Ireland.

55. In this Act, unless the context otherwise requires,—

Definitions;

Terms defined by the Regulation of Railways Act, 1873, have the meanings thereby assigned to them:

The term “conservancy authority” means any persons who are otherwise than for private profit intrusted with the duty or invested with the power of conserving, maintaining, or improving the navigation of any tidal or inland water or navigation:

The term “harbour board” means any persons who are otherwise than for private profit intrusted with the duty or invested with the power of constructing, improving, managing, regulating, and maintaining a harbour, whether natural or artificial, or any dock:

The term “undue preference” includes an undue preference, or an undue or unreasonable prejudice or disadvantage, in any respect, in favour of or against any person or particular class of persons or any particular description of traffic:

The term “terminal charges” includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat:

The term “merchandise” includes goods, cattle, live-stock, and animals of all descriptions:

The term “trader” includes any person sending, receiving, or desiring to send merchandise by railway or canal:

The term “home” in relation to merchandise, includes the United Kingdom, the Channel Islands, and the Isle of Man:

The term “rating appeal” means an appeal against any valuation list or against any poor rate or any other local rate (*a*).

The term “superior court” means, as regards England, the High Court . . .

The term “superior court of appeal” means, as regards England, her Majesty’s Court of Appeal . . .

(a) The expression “local rate” would include a general rate. Parts of the remainder of this section relating to Scotland and Ireland only are here omitted.

* * * * *

Section 1.

THE LOCAL GOVERNMENT ACT, 1888.

(51 & 52 VICT. c. 41.)

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith.

[13th August 1888.]

This Act established county councils throughout England and Wales, and transferred to them most of the administrative powers and duties formerly exercised and performed by justices in quarter sessions. In so far as it relates only to county councils, their election, powers, duties and liabilities, it was formerly beyond the scope of the present Work, and on these subjects the reader was referred to the "Local Government Act, 1888," 3rd ed., by Macmorran and Dill; but there seems no longer to be any logical reason for omitting such provisions, and the Act, so far as unrepealed, is accordingly set out.

PART I.

COUNTY COUNCILS.

Constitution of County Councils.

1, 2. [*Repealed (except as to London) by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

Powers of County Councils.

Transfer
to county
council of
adminis-
trative busi-
ness of
quarter
sessions.

3. There shall be transferred to the council of each county . . .

(a) the administrative business of the justices of the county in quarter sessions assembled, that is to say, all business done by the quarter sessions or any committee appointed by the quarter sessions, in respect of the several matters following, namely,

(i) The making, assessing, and levying of county, police, hundred, and all rates, and the application and expenditure thereof (b),
... (c);

(ii) . . . (c);

(iii) . . . (c);

(iv) . . . (c), assize courts, judges' lodgings, lock-up houses, court houses, justices' rooms, police stations, . . . (c), subject as to the use of buildings by the quarter sessions and the justices to the provisions of this Act respecting the joint committee of quarter sessions and the county council (d);

(v) The licensing under any general Act of houses and other places for music or for dancing, and the granting of licences under the Racecourses Licensing Act, 1879 (e);

(vi) . . . (c);

(vii) The establishment and maintenance of and the contribution to reformatory and industrial schools (f);

(viii) Bridges and roads repairable with bridges, and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority (g);

- (ix) The tables of fees to be taken by and the costs to be allowed any inspector, . . . (c) or person holding any office in the county other than the clerk of the peace and the clerks of the justices (h) ;
- (x) The appointment, removal, and determination of salaries, of . . . (c) any officer under the Explosives Act, 1875, and any officers whose remuneration is paid out of the county rate other than the clerk of the peace and the clerks of the justices (i) ;
- (xi) The salary of any coroner whose salary is payable out of the county rate, the fees, allowances, and disbursements allowed to be paid by any such coroner, and the division of the county into coroners' districts, and the assignment of such districts (k) ;
- (xii) . . . (l) ;
- (xiii) The execution as local authority of the Acts relating . . . (m) to destructive insects, to fish conservancy, to wild birds, to weights and measures, and to gas meters, and of the Local Stamp Act, 1869 (n) ;
- (xiv) Any matters arising under the Riot (Damages) Act, 1886 (o) ;
- (xv) The registration of rules of scientific societies under the Scientific Societies Act, 1843 ; the registration of charitable gifts under the Charitable Donations Registration Act, 1812 ; the certifying and recording of places of religious worship under the Places of Religious Worship Act, 1812 ; the confirmation and record of the rules of loan societies under the Loan Societies Act, 1840 (n) ; and
- (xvi) Any other business transferred by this Act.

Section 3.
—

Poor law functions were transferred to county councils by the L. G. A., 1929, Pt. I, Vol. V. and 10 Halsbury's Statutes 883, registration functions by *ibid.*, Pt. II., and certain highway functions by *ibid.*, Pt. III. Most other powers of county councils have been conferred direct by statute and not transferred.

(a) The words "on and after the appointed day" which were formerly inserted here were repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

(b) Rates are no longer made by the county council. Instead they precept on local authorities (see R. & V. A., 1925, s. 9, and notes thereto, *ante*, pp. 2134-2140). In effect, therefore, no powers really continue to exist under this head.

(c) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(d) Most of these powers were conferred by the County Buildings Act, 1826, which was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1276, except so far as relates to assize courts, sessions houses and judges' lodgings. See now s. 125 of that Act, *ante*, p. 915, as to halls, offices, etc.

(e) The question of licences for these purposes is outside the scope of this work.

(f) The powers in existence for this purpose in 1888 are now superseded by later statutes, notably the Children and Young Persons Act, 1933. The powers are set out in detail in the article on "Approved Schools" in The Encyclopædia of Local Government Law and Administration.

(g) See *ante*, p. 4602.

(h) The excepted fees were, in 1888, fixed under the S. J. A., 1848, s. 30 (11 Halsbury's Statutes 288).

(i) This subject is dealt with in detail in Halsbury's Laws of England (Hailsham edn.), Vol. XIV., pp. 467 *et seq.*

(k) See Coroners (Amendment) Act, 1926, s. 5 (3 Halsbury's Statutes 782).

**Note to
Section 3.**

(l) This paragraph was repealed by the Representation of the People Act, 1918, s. 47, *post*, p. 5177.

(m) The words "to contagious diseases of animals" which were formerly contained in this paragraph were repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

(n) None of these Acts are within the scope of this work. Each subject is dealt with under the specific heading in the Encyclopædia of Local Government Law and Administration.

(o) For this Act, see 12 Halsbury's Statutes 844.

4. [*Repealed (except as to London) by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

**Appointment
of coroners
by county
council.**

5.—(1) . . . (a) a coroner for a county shall not be elected by the freeholders of the county, and on any vacancy occurring in the office of coroner for a county, who is elected to that office in pursuance of a writ *de coronatore eligendo*, a like writ for the election of a successor shall be directed to the county council of the county instead of to the sheriff, and the county council shall thereupon appoint a fit person, not being a county alderman or county councillor, to fill such office, and in the case of a county divided into coroners' districts shall assign him a district; and any person so appointed shall have like powers and duties, and be entitled to like remuneration, as if he had been elected coroner for the county by the freeholders thereof.

(2) Where the district of any such coroner is situate wholly within any administrative county, the council of that county shall, subject as herein-after mentioned, appoint the coroner.

(3) Where the district of any such coroner is situate partly in one and partly in another administrative county forming part of an entire county, the joint committee for the entire county may arrange for the alteration in manner provided by law of the district, so that, on the next avoidance of the office of coroner of that district, or at any earlier time fixed by the joint committee when the alteration is made, the coroner's district shall not be situate in more than one administrative county.

(4) Until such arrangement is made, the joint committee for the entire county shall appoint the coroner for the said district, and the amount payable in respect of the salary, fees, and expenses of such coroner shall be defrayed in like manner as costs of the joint committee are directed by this Act to be defrayed.

(5) Nothing in this Act respecting the appointment of a coroner shall alter the jurisdiction of a coroner for the entire county, or any power of removing such coroner, whether by writ *de coronatore exonerando* or otherwise, and all writs for the election or removal of a coroner shall be altered so as to give effect to this election.

(6) . . . (a) any . . . (a) enactment relating to the election of a coroner for a county by the freeholders of such county or any district thereof, are hereby repealed . . . (a).

(7) . . . (b).

(a) Certain words here were repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

**Note to
Section 5.**

(b) This paragraph was repealed by the L. G. A., 1933, *ante*, p. 735.

6. The county council shall have power to purchase, or take over on terms to be agreed on, existing bridges not being at present county bridges, and to erect new bridges, and to maintain, repair, and improve any bridges so purchased, taken over, or erected.

Power of
council as
to bridges.

7. There shall be transferred to the county council . . . (a) the business of the justices of the county out of session—

Transfer to
county
council of
certain
powers of
justices out
of session.

(a) in respect of the licensing of houses or places for the public performance of stage plays, and

(b) in respect of the execution as local authority of the Explosives Act, 1875.

(a) Certain words here were repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

8.—(1) Nothing in this Act shall transfer to a county council any business of the quarter sessions or justices in relation to appeals by any overseers or persons against the basis or standard for the county rate or against that or any other rate.

Reservation
of business
to quarter
sessions.

(2) All business of the quarter sessions or any committee thereof not transferred by or in pursuance of this Act to the county council shall be reserved to and transacted by the quarter sessions or committee thereof in the same manner, as far as circumstances admit, as if this Act had not passed.

9.—(1) The powers, duties, and liabilities of quarter sessions and of justices out of session with respect to the county police shall . . . (a) vest in and attach to the quarter sessions and the county council jointly, and be exercised and discharged through the standing joint committee of the quarter sessions and county council appointed as herein-after mentioned.

Powers as
to police

(2) Provided that the powers conferred by section seven of the County and Borough Police Act, 1856, which requires constables to perform, in addition to their ordinary duties, such duties connected with the police as the quarter sessions may direct or require, shall continue to be exercised by the quarter sessions as well as by the said standing joint committee, and may also be exercised by the county council; and the said section shall be construed as if the county council and the said standing joint committee were therein mentioned as well as the quarter sessions.

(3) Nothing in this Act shall affect the powers, duties and liabilities of justices of the peace as conservators of the peace, or the obligation of the chief constable or other constables to obey their lawful orders given in that behalf.

(a) Certain words here were repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

10. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.]

Section 11.

Entire main-
tenance of
[county]
roads by
county
council (a).

11.—(1) Every road in a county (b) which is for the time being a [county] road (c) within the meaning of the Highways and Locomotives (Amendment) Act, 1878 (d), inclusive of every bridge carrying such road if repairable by the highway authority (e), shall, *after the appointed day* (f), be wholly (g) maintained and repaired by the council of the county in which the road is situate, and such council, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road (h), shall have the same powers and be subject to the same duties as a highway board, and may further exercise any powers vested in the council for the purpose of the maintenance and repair of bridges (i), and the enactments relating to highways and bridges shall apply accordingly; and the county council shall have the same powers as a highway board for preventing and removing obstructions (k), and for asserting the right of the public to the use and enjoyment of the roadside wastes (l); and the execution of this section shall be a general county purpose . . . (m).

(a) Considerable amendments have been effected in this section by Part III. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, under which as from April 1st, 1930, county councils become the highway authorities in respect of all "county roads" (i.e., roads which were formerly "main roads," "classified roads" in urban districts and all roads in rural districts) other than county roads claimed, under s. 32, *ibid.*, by the councils of urban districts of more than 20,000 population.

References in any enactment to "main roads" are to be construed as references to "county roads" (s. 29 (1)).

In relation to county roads (other than those claimed under s. 32, *ibid.*) county councils have the same functions as they possess in relation to main roads under sub-s. (1) of the section in the text. Further functions in relation to "county roads" and all highways in rural districts are also conferred upon them by the L. G. A., 1929, to the provisions of which reference should be made.

(b) The expression "county" practically includes every place within an administrative county, i.e., a county for which a county council is elected. It includes all quarter sessions boroughs other than county boroughs. See ss. 35 (3) and 38 (3), *post*, pp. 4747, 4751.

(c) "County road" is substituted for "main road" by s. 29 (1), L. G. A., 1929. Reference should be made to the definition of "road" in s. 134 of that Act, Vol. V. and 10 Halsbury's Statutes 971.

(d) The Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 4602, so far as material and unrepealed, and as amended by the L. G. A., 1929, is set out: see especially ss. 13—17, *ante*, pp. 4605—8, and the notes thereto. The administrative business formerly done by quarter sessions under that Act in respect of all powers vested by it in the "county authority" is transferred to the county councils by s. 3 (viii.) of this Act.

Bridges.

(e) "County bridges" (see the definition in s. 134, L. G. A., 1929) over which a county road is carried are not affected by this provision. Apart from it they are repairable by the county council, the powers and duties of the justices in quarter sessions having been transferred to them by s. 3 (viii.) of this Act, *ante*, p. 4722. The liability to repair a bridge *ratione tenuræ* is not transferred to a county council by virtue of this provision, and this non-liability is preserved by s. 38, L. G. A., 1929. But all bridges carrying county roads, if repairable by the highway authority, are within the expression "county roads" (see s. 134, L. G. A., 1929).

By s. 6 of the 1888 Act, *ante*, p. 4725, a county council may take over, on terms to be agreed on, existing bridges not being county bridges, and may maintain, repair, and improve such bridges. See also the Bridges Act, 1929, Vol. V. and 9 Halsbury's Statutes 268.

(f) Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175). The appointed day was April 1st, 1889.

(g) Under Highways and Locomotives (Amendment) Act, 1878, s. 13 (9 Halsbury's

Statutes 172), the county authority contributed only a moiety of the cost of maintenance. Now they are liable for the entire cost. This provision, however, does not affect their right to receive the income of charitable trusts created for the repair of the road or bridge (*Att.-Gen. v. Day*, [1900] 1 Ch. 31; 64 J. P. 88; 26 Digest 372, 980; *Re Hall's Charity, Severn Comrs. v. Charity Trustees and Worcestershire County Council* (1911), 76 J. P. 9; 28 T. L. R. 32; 26 Digest 578, 2693).

Note to
Section 11.
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A local Act of 1871 gave power to the corporation of a borough to order that in any street (whether or not a highway repairable by the inhabitants at large) footways should be made by the frontagers of such form, size, and materials as the corporation should direct; and provided that if the frontagers made default in execution of the work, the corporation might cause the work to be executed and recover the cost from the frontagers. It was held that when the borough had by virtue of this Act become a county borough, the provisions of s. 11, *supra*, had not the effect of repealing the provisions of the local Act as regards streets which were main roads (*Lodge v. Huddersfield Corporation*, [1898] 1 Q. B. 847; 62 J. P. 387; 26 Digest 549, 2459; see also *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566; 26 Digest 582, 2724).

(h) Under Highways and Locomotives (Amendment) Act, 1878, s. 13 (9 Halsbury's Statutes 172), the county authority contributed only towards the cost of maintenance. It was held that the cost of removing snow, so as to render a main road passable, was an expense within the meaning of this term (*Amesbury Guardians v. Wiltshire J.J.* (1883), 10 Q. B. D. 480; 47 J. P. 184; 26 Digest 395, 1213). *Cf. Acton D. C. v. London United Tramways*, [1909] 1 K. B. 68; 73 J. P. 6; 26 Digest 439, 1563, as to a tramway company's liability to remove snow from a street under the Tramways Act, 1870, *ante*, p. 4272. The cost of scavenging and watering was also held to be within the term so far as these were necessary for keeping the road in repair, as distinguished from scavenging and watering for purposes of public health and comfort (*R. v. Essex J.J.* (1888), 4 T. L. R. 676; *Burnley Corporation v. Lancaster C. C.* (1889), 54 J. P. 279; 26 Digest 395, 1215; *Re Warminster L. B. and Wiltshire C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375; 26 Digest 395, 1217). The House of Lords held that lighting was not "maintaining or repairing," in *Lanarkshire Road Trustees v. Fleming* (1886), 14 R. (Ct. of Sess.) (H. L.) 18; and in *Warminster L. B. v. Wiltshire C. C.*, *supra*, the court held that the cost of lighting main roads was not cast upon county councils by the wider language of the text. The words "improvement and enlargement of and other dealing" were inserted to meet the decision in *Leek Improvement Commissioners v. Staffordshire J.J.* (1888), 20 Q. B. D. 794; 52 J. P. 403; 26 Digest 395, 1216, where it was held that converting a macadamised road into a paved road did not come within the term "maintenance," but it would no doubt be an improvement or other dealing with the road within the meaning of the text. See also *London (Lord Mayor, etc. of) v. Barnes* (1896), 12 T. L. R. 135. The Highway Act, 1864, ss. 47, 48 (9 Halsbury's Statutes 158, 160), enumerates certain acts which are to be deemed improvements which a highway board may make, and the county council will have the same powers. These improvements include the conversion of any road that has not been stoned into a stoned road, the widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges, and the doing of any work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair. See also as to improvements the Development and Road Improvement Funds Act, 1909, *post*, p. 5105, amended by the Roads Act, 1920, Vol. V., *post*, and the Roads Improvement Act, 1925, Vol. V., *post*. For the purposes of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, the expression "improvement" in relation to a road includes the fixing of a building line or improvement line under any enactment (s. 134, *ibid.*). The county council is liable to repair footpaths by the side of main roads, paved or pitched crossings, etc. (see *Re Warminster L. B. and Wiltshire C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375; 26 Digest 395, 1217; *In re Burslem Corporation and Staffordshire C. C.*, [1896] 1 Q. B. 24; 59 J. P. 772; 26 Digest 395, 1218; *Derby C. C. v. Matlock Bath and Scarthin Nick U. D.*, [1896] A. C. 315; 60 J. P. 676; 26 Digest 395, 1219).

The owner of land, through which a main road ran, brought an action against the county council claiming a declaration that the council were liable to repair the

**Note to
Section 11.**
—

retaining walls on either side of such road; he also asked for a mandatory injunction ordering the council to do any necessary repairs to such walls. It was held that the court could not consider whether the repair of those walls (or any other particular work) was necessary for the proper maintenance of the road, and that it would be contrary to practice to grant a mandatory injunction to do repairs even if the council were liable to repair the walls (*Att.-Gen. v. Staffordshire C. C.*, [1905] 1 Ch. 336, 69 J. P. 97; 26 Digest 353, 797; but cf. *R. v. Wilts and Berks Canal Co.*, [1912] 3 K. B. 623; 77 J. P. 24; 16 Digest 295, 1082). The liability of a highway authority is general, i.e., merely to repair and maintain the highway; they must select and adopt proper methods of performing their duty; the court will not prescribe methods, but merely consider the result (*Att.-Gen. v. Staffordshire C. C.*, *supra*). Whether the only liability as distinct from duty is on the inhabitants of the parish, *quære* (*ibid.*). See further as to the discretion of a highway authority as to the mode of repairing, *Lodge Holes Colliery Co., Ltd. v. Wednesbury Corporation*, [1908] A. C. 323; 72 J. P. 417; 26 Digest 331, 630; *R. v. Brighton Corporation, Ex parte Shoemith* (1907), 71 J. P. 265; 96 L. T. 762; 26 Digest 386, 1148.

**Repair of
bridges.**

(i) The county council have now all the powers formerly exercised by justices in quarter sessions as to the repair of county bridges. See s. 3 (viii.) of this Act, *ante*, p. 4722. As to the general liability of the county council (as representing the "inhabitants") to repair a county bridge, see *Att.-Gen. v. West Riding C. C.* (1903), 67 J. P. 173; 26 Digest 572, 2638, and cases cited therewith on p. 4374, *ante*. A bridge was partly in Staffordshire and partly in Derbyshire, and by a local Act the expenses of repairing it were to be borne equally by the two county rates. Although by s. 50 of this Act (repealed) the whole of the bridge became included in Staffordshire, it was held that the local Act remained in force, and both counties were still liable equally (*Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566; 26 Digest 582, 2724). If the county council make any alteration in the road so as to cause a nuisance, they will be liable in damages to any person injured thereby: see *Shill v. Gloucestershire C. C.* (1893), Times, October 30th. But where the approach to a county bridge had subsided, and the county council proposed to raise it to its original level, it was held that they could not be restrained from doing so at the suit of a frontager, who alleged injury to his property (*Aitherton v. Cheshire C. C.* (1895), 60 J. P. 6; 26 Digest 334, 655). As to the liability of councils, railway and canal companies and others to repair bridges and "approaches" thereto and fences thereof, and in some cases to raise bridges when a subsidence occurs, see cases cited in note (d) to the P. H. A., 1875, s. 148, *ante*, p. 4369.

For the purpose of repairing county roads the county council have the same right under this section of taking gravel from a pit as a surveyor of highways has (*Norfolk C. C. v. Bittering Highway Surveyor* (1894), 58 J. P. 497; 26 Digest 354, 805). See also as to the power of a county council to take materials for repairs under the Highway Act, 1835, ss. 51, 53 (9 Halsbury's Statutes 72, 74), *Allinson v. Cumberland C. C.* (1907), 71 J. P. 398; 97 L. T. 187; 26 Digest 355, 813.

See also note (c), *supra*.

**Removing
obstructions
to highways.**

(k) The costs of prosecuting by indictment for obstructing a highway are properly chargeable as part of the cost of maintaining a highway (*R. v. Heath* (1865), 29 J. P. 452). JESSER, M.R., expressed an opinion that the Crown or the conservators of a road had by their agents a right to remove an obstruction, though a private person has no such right if he could pass without doing so, and that in any case a body or person who represented the public would have such a right after judicial determination that there was an obstruction (*Bagshaw v. Buxton L. B.* (1875), 1 Ch. D. 220; 40 J. P. 197; 26 Digest 449, 1652). But in *Reynolds v. Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296; 26 Digest 449, 1654, it was held that an urban district council has power to remove encroachments upon any highway within the district vested in them by the P. H. A., 1875, s. 149, *ante*, p. 4375, without first taking proceedings, either summarily or by way of indictment, against the person responsible. And according to the *dicta* in *Louth U. D. C. v. West* (1896), 60 J. P. 600; 65 L. J. Q. B. 535; 26 Digest 391, 1176, it would appear that this power is exercisable by rural district councils also. Moreover, in *Harris v. Northamptonshire C. C.* (1897), 61 J. P. 599; 13 T. L. R. 440; 26 Digest 449, 1656, it was held that a county council has the like power of removing obstructions without first taking proceedings, apart from any vesting in them of the soil of the road. But the practice

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of acting without first obtaining a judicial decision in cases where there is a doubt as to whether the obstruction is lawful or not was strongly condemned in *Reynolds v. Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296; 26 Digest 449, 1654, and in *Urban Housing Co. v. Oxford Corporation*, [1940] 1 Ch. 70; [1940] 4 All E. R. 211; 104 J. P. 15; Digest Supp. In *Louth U. D. C. v. West* (1896), 60 J. P. 600; 65 L. J. Q. B. 535; 26 Digest 391, 1176, it was held that the local authority might recover the expenses of removal by action from the person responsible.

It has been held in Ireland that traction engine traffic which breaks up a road reasonably fit for the ordinary traffic thereof is a public nuisance, and that (apart from statutory provision) a council liable to repair such road can recover the extra cost of repairs as special or particular damage (*Cavan C. C. and Bailieborough R. D. C. v. Kane*, [1910] 2 I. R. 644; [1913] 2 I. R. 250; 26 Digest 470, t). The same law applies in Scotland (*Glasgow Corporation v. Barclay, Curle & Co., Ltd.* (1923), 87 J. P. 160; 130 L. T. 33; 26 Digest 462, s). See also cases on p. 4364, *ante*.

(I) The highway is *prima facie* the entire space between the fences which is capable of being used for passage. See and compare the following cases as to the presumption and the conditions to which it is subject: *R. v. United Kingdom Telegraph Co.* (1862), 2 B. & S. 647 n.; 26 J. P. 390; 26 Digest 313, 452; *Turner v. Ringwood Highway Board* (1870), L. R. 9 Eq. 418; 26 Digest 315, 476; *Nicol v. Beaumont* (1883), 53 L. J. Ch. 853; 50 L. T. 112; 26 Digest 312, 443; *Harris v. Northamptonshire C. C.* (1897), 61 J. P. 599; 13 T. L. R. 440; 26 Digest 449, 1656; *Locke-King v. Woking U. D. C.* (1897), 77 L. T. 790; 14 T. L. R. 32; 26 Digest 314, 459; *Friern Barnet U. D. C. v. Richardson* (1898), 62 J. P. 547; 26 Digest 314, 460; *Neeld v. Hendon U. D. C.* (1899), 63 J. P. 724; 81 L. T. 405; 26 Digest 314, 461; *Evelyn v. Mirrielees* (1900), 17 T. L. R. 152; 26 Digest 315, 470; *Belmore (Countess of) v. Kent C. C.*, *post*, p. 4730; *Att.-Gen. v. Esher Linoleum Co.*, [1901] 2 Ch. 647; 26 Digest 281, 178; *Thames Conservators v. Dennis* (1902), Times, November 1st; *Pullin v. Deffel* (1891), 64 L. T. 134; 26 Digest 315, 477; *Ford v. Harrow U. D. C.* (1903), 67 J. P. 248; 88 L. T. 394; 26 Digest 315, 469; *Harvey v. Truro R. D. C.*, [1903] 2 Ch. 638; 68 J. P. 51; 26 Digest 313, 454; *Plumbley v. Lock* (1902), 67 J. P. 237; 19 T. L. R. 14; 26 Digest 430, 1495; *Att.-Gen. v. Perry*, [1904] 1 I. R. 247; *Offin v. Rochford R. D. C.*, [1906] 1 Ch. 342; 70 J. P. 97; 26 Digest 313, 455; *Att.-Gen. v. Moorsom-Roberts* (1908), 72 J. P. 123; 26 Digest 315, 468; *St. Ives Corporation v. Wadsworth* (1908), 72 J. P. 73; 26 Digest 261, 14; *Leeke v. Portsmouth Corporation* (1912), 107 L. T. 260; 7 Digest 322, 421; *Coats v. Herefordshire C. C.*, [1909] 2 Ch. 579; 73 J. P. 355; 26 Digest 291, 230; *Copestake v. West Sussex C. C.*, [1911] 2 Ch. 331; 75 J. P. 465; 26 Digest 304, 355; *Att.-Gen. v. Warren Smith* (1912), 76 J. P. 253; 26 Digest 451, 1669; *Att.-Gen. v. Lindsay-Hogg*, [1912] W. N. 176; 76 J. P. 450; 26 Digest 295, 263; *East v. Berkshire C. C.* (1911), 76 J. P. 35; 106 L. T. 65; 26 Digest 314, 456; *Att.-Gen. v. Hemingway* (1916), 81 J. P. 112; 15 L. G. R. 161; 26 Digest 301, 316. It would not ordinarily include an open and unenclosed ditch by the side of it (*Thorne v. Field* (1869), 33 J. P. 727; 20 L. T. 563; 26 Digest 435, 1531; *Hanscombe v. Bedfordshire C. C.*, [1938] Ch. 944; [1938] 3 All E. R. 647; Digest Supp.), although there is no rule of law that a ditch running alongside a highway cannot be dedicated as part of the highway, merely because it is not part of the roadway and cannot be used by the public for purposes of passage (*Chorley Corporation v. Nightingale*, [1907] 2 K. B. 637; 71 J. P. 441; 26 Digest 315, 472); with the last case compare *Walmsley v. Featherstone U. D. C.* (1909), 73 J. P. 322; 26 Digest 310, 430. Nor would it include any part of the unenclosed land adjoining a highway which had never been dedicated as part of the highway though within fifteen feet of the centre of the road (*Easton v. Richmond Highway Board* (1871), L. R. 7 Q. B. 69; 36 J. P. 485; 26 Digest 435, 1536). And see *Robinson v. Coupen Local Board* (1893), 63 L. J. Q. B. 235; 9 R. 858; 26 Digest 300, 309. As to whether the whole width of a projected road has been dedicated, or only that portion of it as yet reasonably fit for traffic, see *Rowley v. Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97; 26 Digest 308, 407. As to the liability of a local authority for the interference by a third party with the right of access to a highway, see *Porter v. Tottenham U. D. C.*, [1915] 1 K. B. 776; 79 J. P. 169; 7 Digest 337, 26.

The provision in the text appears to imply that the county council will have the same powers over and in respect of roadside wastes between the fences as they have wastes.

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with respect to the rest of the highway; but it is submitted that they have no powers or rights over roadside wastes which do not form part of the highway and which remain private property as before (*Belmore (Countess of) v. Kent C. C.*, [1901] 1 Ch. 873; 65 J. P. 456; 26 Digest 314, 466). In *Curtis v. Kesteven C. C.* (1890), 45 Ch. D. 504; 26 Digest 391, 1174, unmetalled strips adjoining a main road were held by NORTH, J., to be "roadside wastes" within the meaning of the subsection in the text but not to be vested in the county council by sub-s. (6) (which is in relation to "county roads" re-enacted by s. 29 (2) and (3), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903). By the L. G. A., 1894, s. 26 (6), *post*, p. 4911, nothing in that section shall affect the powers of the county council in relation to roadside wastes. The powers of a rural district council in relation to rights of way and roadside wastes under that section are preserved by s. 30, L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904.

(m) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(2) *Provided that any urban authority may, within twelve months after the appointed day, or in case of a road in the district of such authority becoming a main road at any subsequent date then within twelve months after that date, claim to retain the powers and duties of maintaining and repairing a main road within the district of such authority, and thereupon they shall be entitled to retain the same, and, for the purpose of the maintenance, repair, improvement, and enlargement of, and other dealing with such road, shall have the same powers and be subject to the same duties as if such road were an ordinary road vested in them, and the council shall make to such authority an annual payment towards the costs of the maintenance and repair, and reasonable improvement connected with the maintenance and repair of such road.*

This subsection is repealed by L. G. A., 1929, Sched. XII., Pt. III.; Vol. V. and 10 Halsbury's Statutes 1016. The right to "claim" county roads can now be exercised only by the councils of urban districts with a population of more than 20,000 (s. 32, Vol. V. and 10 Halsbury's Statutes 906). Where such authorities had "retained" main roads under this subsection they are to be deemed to have claimed such roads under s. 32 (5), Vol. V. and 10 Halsbury's Statutes 908. The contributions to be made by county councils towards the maintenance, repair, and improvement of claimed county roads is provided for in s. 33.

(3) *The amount of such payment shall be such annual sum as may be from time to time agreed on, or in the absence of agreement may be determined by arbitration of the Local Government Board.*

This subsection is repealed by L. G. A., 1929, Sched. XII., Pt. III., see note to sub-s. (2), *supra*.

(4) *The county council and any district council may from time to time contract for the undertaking by the district council of the maintenance, repair, improvement, and enlargement of, and other dealing with any main road, and, if the county council so require, the district council shall undertake the same, and such undertaking shall be in consideration of such annual payment by the county council for the costs of the undertaking as may from time to time be agreed upon, or, in case of difference, be determined by arbitration of the Local Government Board; and for the purposes of such undertaking the district council shall have the same powers and be subject to the same duties and liabilities as if the road were an ordinary road vested in them.*

This subsection is repealed by Sched. XII., Pt. III., L. G. A., 1929. Under that Act county councils may delegate their functions in respect of county roads to district councils, see ss. 35 and 36, Vol. V. and 10 Halsbury's Statutes 910, 911.

(5) *Provided that in no case shall a county council make any payment to a district council towards the costs of such undertaking as respects any road, or towards the costs of the maintenance, repair, or improvement of any road by an urban authority, until the county council are satisfied by the report of their surveyor, or such other person as the county council may appoint for the purpose, that the road has been properly maintained and repaired, or that the improvement or enlargement of or other dealing with the road, as the case may be, has been properly executed.* Section 11.

This subsection is repealed by Sched. XII., Pt. III., L. G. A., 1929.

A similar provision is contained in ss. 33 and 36, Vol. V. and 10 Halsbury's Statutes 908, 911.

(6) *A main road and the materials thereof, and all drains belonging thereto, shall, except where the urban authority retain the powers and duties of maintaining and repairing such road, vest in the county council, and where any sewer or other drain is used for any purpose in connexion with the drainage of any main road, the county council shall continue to have the right of using such sewer or drain for such purpose, and if any difference arises between a county council and any highway or sanitary authority as respects the authority in whom the drain is vested, or as to the use of any sewer or other drain, the council or the highway or sanitary authority may require such difference to be referred to arbitration, and the same shall be referred to arbitration in manner provided by this Act.*

This sub-section is repealed by Sched. XII., Pt. III., L. G. A., 1929.

A similar provision in relation to "county roads" is contained in s. 29 (2) and (3), Vol. V. and 10 Halsbury's Statutes 903.

(7) *Where a county council declare a road to be a [county] road, such declaration shall not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council.* Declaration as a main road.

This provision is in effect an amendment or proviso to the Highways and Locomotives (Amendment) Act, 1878, s. 15 (9 Halsbury's Statutes 172). That Act is amended by the L. G. A., 1929, s. 37, Vol. V. and 10 Halsbury's Statutes 912, and for references in the Act as so amended as well as in the provision in the text to "main roads," the words "county roads" are now substituted (s. 29 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903). As to the determination of any dispute arising as to the condition of the road, see sub-s. (9), *infra*.

(8) *If at any time the county council are satisfied, on the report of their surveyor or other person appointed by them for the purpose, that any portion of a main road, the maintenance and repair of which are undertaken by any district council, is not in proper repair and condition, the county council may cause notice to be given to such district council, requiring them to place the road in proper repair and condition; and, if such notice is not complied with within a reasonable time, the county council may do everything that seems to them necessary to place the road in proper repair and condition, and the expenses of so doing shall be a debt of the said district council to the county council.*

This sub-section is repealed by Sched. XII., Pt. III., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903.

A similar provision enabling a county council to act in place of a district council to whom functions are delegated under s. 35 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 910, is contained in s. 36 (1), *ibid*. No provision as to

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Determina-
tion of
differences.

expenses is, of course, contained in s. 36 (1) since the cost of maintaining county roads, even when functions in relation thereto have been delegated, is borne by the county council.

(9) If any difference arises under this section between a county council and a district council *as to the refusal of the county council to make a payment under this section to the district council in respect of any undertaking or road, or as to a road having been placed in proper repair and condition previously to its becoming a [county] road, or as to any notice given to the district council by the county council to place a road in proper repair and condition*, such difference shall, if either council so require, [be determined by the Local Government Board as arbitrators or otherwise at the option of the Board].

Words in italics repealed by L. G. A., 1929, Sched. XII., Pt. III.

"County road" is substituted for "main road" in consequence of s. 29 (1), L. G. A., 1929.

In this sub-section, the words in square brackets were substituted by the Local Government (Determination of Differences) Act, 1896, *post*, p. 4938, for the words "be referred to the arbitration of the Local Government Board." The powers of the L. G. B. in relation to roads are now transferred to the Minister of Transport by the Ministry of Transport Act, 1919, *post*, p. 5195, and orders made thereunder, *ante*, p. 3438. It is only where the Minister determines any difference as arbitrator that he is obliged to appoint under s. 63, *post*, p. 4754, an arbitrator who may be compelled under the Arbitration Act, 1889, s. 24, *post*, p. 4793, to state a case for the opinion of the court. Where the Minister determines otherwise than as arbitrator he proceeds under s. 87, *post*, p. 4763, and this, in fact, is the course usually adopted. As to the finality of his decision where he so decides, see *R. v. L. G. B.* (1908), 72 J. P. 211; 26 Digest 396, 1227.

The differences referred to are those which may arise under sub-s. (7).

Contribution
by county
council to
other
highways.

(10) The county council may, if they think fit, contribute towards the costs of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a [county] road.

The words "county road" are substituted for "main road" in consequence of s. 29 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903.

As to the meaning of the words "maintenance, repair, enlargement, and improvement," see note (h) to sub-s. (1), *ante*, p. 4727.

The text uses the words "highway or public footpath," but a public footpath is to all intents and purposes a highway, and is repairable like any other highway: see *per* LORD ELLENBOROUGH, C.J., in *R. v. Salop Inhabitants* (1810), 13 East, at p. 97; 26 Digest 262, 32.

The contribution under this sub-section may be made subject to any such conditions for the proper maintenance and repair of such highway as may be agreed on between the county council and the highway authority: see the L. G. A., 1894, s. 25 (3), *post*, p. 4906.

See further as to agreements between county councils and highway authorities in relation to the construction, improvement, etc., of highways, s. 3 of the Highways and Bridges Act, 1891, *post*, p. 4833.

Lighting of
[county]
roads.

(11) Every authority having any power or duty to light the roads in their district shall have the same power and duty to light any [county] road in their district.

The words "county road" are substituted for "main road" in consequence of s. 29 (1), L. G. A., 1929.

The result of this provision is that the county council are not liable to light county roads in any case; they have, however, power to do so under s. 23, Road Traffic Act, 1934, Vol. V., *post*. In urban districts the power devolves on the urban authority

under the P. H. A., 1875, ss. 161, 162, *ante*, pp. 4445, 4449. They may under these sections contract for the supply of gas or other means of lighting the street, and if there is no company having statutory powers in their district they may themselves provide a supply of gas for public or private purposes. In the latter case they may obtain a special order under the Gas Regulation Act, 1920, s. 10, Vol. V., *post*. They may also purchase the undertaking of any gas company in their district. See the notes to the sections referred to.

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In rural districts also there is no statutory obligation upon the local authority to light roads. The rural district council may do so in pursuance of an order under s. 276, P. H. A., 1875, *ante*, p. 4502, giving them the powers of an urban authority under s. 161 of the Act, *ante*, p. 4445, or the parish council may act under the Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186), where the lighting provisions of that Act have been adopted by the parish meeting. See the L. G. A., 1894, ss. 7, 53, *post*, pp. 4895, 4913, in this connection.

Under the Electric Lighting Acts, 1882 to 1909, which are set out *ante* and *post*, an urban or rural district council might obtain power to supply electricity for public or private purposes. But see now the provisions of the Electricity (Supply) Acts, 1919, 1922, *post*, p. 5245 and Vol. V., *post*, and 1926, Vol. V. and 7 Halsbury's Statutes 792, which are also set out, *post*.

(12) Anything authorised or required by law to be done by or to a highway or road authority shall, as respects a [county] road maintained by a county council, be authorised or required to be done by or to that council (a); and every authority having any power to break up any road in their district for the purpose of sewerage or otherwise shall have the like power of breaking up any [county] road in their district (b), but if the road is broken up the authority shall repair it to the satisfaction of the county council maintaining such road, and if it is not repaired to the satisfaction of the county council, that council may cause the necessary repairs to be done and may charge the costs against the authority, and the same shall be a debt due from the authority to the council (c).

Breaking up
[county]
roads.

References in this sub-section to "main roads" have been altered to "county roads" (s. 29 (1), L. G. A., 1929).

(a) This provision apparently confers upon a county council all the powers and liabilities of a highway surveyor or a highway board for the purposes of county roads.

Moreover, in the case of highways in rural districts the county council are by s. 30 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, empowered to exercise all such functions under the Highway Acts, 1835-1885 (9 Halsbury's Statutes 50, 122, 141, 142, 166, 188, 191), as were exercisable by rural district councils who succeeded highway boards under the L. G. A., 1894, *post*, p. 4892.

(b) A sanitary authority may lay sewers and water mains in any road, and may break up roads for that purpose (P. H. A., 1936, ss. 15, 36, 119, 121, 227, 279, *ante*, pp. 26, 119, 367, 371, 493, 568). Among other authorities who may break up roads may be mentioned water companies under the Waterworks Clauses Act, 1847, ss. 28-34, *ante*, pp. 4183-4186; gas companies under the Gasworks Clauses Act, 1847, ss. 6-12, *ante*, pp. 4165-4168; tramway companies under the Tramways Act, 1870, ss. 26, 27, 30, *ante*, pp. 4280, 4281, 4283; electric lighting companies under the Electric Lighting Act, 1882, ss. 12, 13, *ante*, p. 4650. All these Acts are set out in this Volume. The provisions of the text as to the reinstating of the roads are in addition to those contained in those Acts.

(c) The expenses incurred being made a debt, will be recoverable by action in the High Court or in the County Court if less than £100.

(13) Section twenty of the Highways and Locomotives (Amendment) Act, 1878, shall apply as if it were herein re-enacted and in terms made applicable to this section.

Repair of
[county]
roads out of
hundred
rates.

The Highways and Locomotives (Amendment) Act, 1878, s. 20 (9 Halsbury's Statutes 174), which was repealed by the L. G. A., 1929, provided as follows:—

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"Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority from time to time, by order, to declare any [county] road or part of a [county] road within their district to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such [county] road or part is situate, as they think fit; and where a [county] road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged."

The repeal of the section above referred to does not affect this sub-section since the effect of the sub-section is to insert the words set out above into this sub-section which is not affected by the L. G. A., 1929, except that for the words "main road" where they occur in this section are substituted the words "county road" (s. 29 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903).

The following is an extract from a letter, dated September 18th, 1878, from the L. G. B. with reference to this section: "The wording of this section, which was introduced at a very late stage of the Bill, and is limited in its application to the county of Lancaster chiefly, is somewhat obscure; but it may be assumed that the effect of declaring a main road repairable by the hundred is simply intended to be that the hundred rate shall be substituted for the county rate as the fund from which a moiety of the cost is to be repaid to the highway authorities. The justices will not fail to observe that where the alternative given by the section is adopted, it is desirable that all the main roads in the county should be declared to be repairable by the several hundreds through which they pass, otherwise the ratepayers of those hundreds will not only have to contribute towards the roads within their own hundreds, but also towards any roads within the county in respect of which a contribution is payable from the county rate."

By virtue of this provision as applied by the text the expenses of maintaining county roads may be made payable out of the hundred rate instead of the county rate, wherever the sub-section is applicable. The hundred rate was made and levied by the county council under s. 3 (i), *ante*, p. 4722. The powers of the county council to levy a rate are taken away by s. 1, R. and V. A., 1925, *ante*, p. 2113. The "hundred rate" will apparently be raised as an "additional item" of the general rate (s. 2 (5), *ibid.*). It appears, however, that the expense of county roads in counties to which this section applies is a "general county purpose" (*R. v. Dolby*, [1892] 2 Q. B. 736; 26 Digest 396, 1226).

Roads and
tolls in Isle
of Wight.

12.—(1) *After the appointed day*, tolls shall cease to be taken on any road maintained and repaired by the Isle of Wight Highway Commissioners, under the Isle of Wight Highway Acts, 1813 and 1883, and *after such day* the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act, shall apply to the Isle of Wight, and to every such road above mentioned, in like manner as if it were ceasing within the meaning of the said Act to be a turnpike road, *and the Act of the session of the forty-fourth and forty-fifth years of the reign of her present Majesty, chapter seventy-two, shall be repealed.*

Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

By the Isle of Wight Highways Act, 1925, all the roads in the island repairable by the inhabitants at large became main roads, subject to the proviso that roads in urban districts which were not formerly main roads are first to be put in repair to the satisfaction of the county council. The Act contains several amendments of s. 11 of this Act, *ante*, p. 4726, and should be referred to.

The county council is that of the Isle of Wight which was made an administrative county of itself by Provisional Order (Local Government Board's Provisional Order Confirmation (No. 2) Act, 1889) in 1889. The provisions of Pt. III. of the L. G. A.,

1929, Vol. V. and 10 Halsbury's Statutes 903, did not apply to the Isle of Wight, but the Minister of Health by the L. G. A. (Application to Isle of Wight) Order, 1930, S. R. & O., 1930, No. 757, directed that that part of the Act and the consequential provisions as to the transfer of officers, property and liabilities apply to the Isle of Wight subject to exception, adaptations, and modifications, and by such order amended the provisions of the Isle of Wight (Highways) Act, 1925 (see s. 138 (4), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975).

Note to
Section 12.
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(2) *Until provision is otherwise made by Parliament, or by a Provisional Order confirmed by Parliament, the repair and maintenance of the said roads shall continue to be undertaken by the said commissioners, and the county council for the county of Southampton shall pay such commissioners, in respect of the said repairs and maintenance, and of the expenses of the commissioners, such sums as may be agreed upon, or, in case of difference, be settled by arbitration under this Act, and the provisions of this Act with respect to main roads shall apply as if the commissioners were a district council who had undertaken the maintenance and repair of such road.*

This sub-section was repealed by s. 20 of the Isle of Wight Highways Act, 1925, as from April 1st, 1925.

13.—(1) *After the appointed day no county road rate shall be levied and tolls shall cease to be taken on any road maintained and repaired by a county roads board in South Wales, in pursuance of the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, and after such day the Highways and Locomotives (Amendment) Act, 1878, as amended by this Act shall apply to every county in South Wales as if the Highway districts in that county had been constituted under the Highway Act, 1862, and the Highway Act, 1864, or one of those Acts, and shall apply to every such road as above mentioned, in like manner as if it were ceasing, within the meaning of the said Act, to be a turnpike road.*

Adaptation
of Act to
South Wales
roads.

Italicised words in both sub-sections repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

By South Wales Turnpike Trusts Act, 1844, in each of the six counties of South Wales—namely, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan—a “county roads board” was appointed, consisting of from six to twelve justices appointed by quarter sessions and certain *ex-officio* members, to have the superintendence, control, and management of all turnpike roads in the county. They had power to continue existing toll gates and to erect others and to take tolls. They might discontinue tolls on any road, and thereupon such road became an ordinary highway. By the same Act the commissioners who were appointed by the Act “for consolidating and adjusting the turnpike trusts of South Wales” might mark out and define in each county, districts which, subject to the superintendence and authority of the county roads board, should be placed under the care and management of “district roads boards.” The members of these district boards were originally nominated by the commissioners out of persons possessing a prescribed qualification, all justices residing within the district being *ex-officio* members; vacancies were from time to time filled up by the board, the elected members retiring by rotation. The officers of the district boards were appointed by the county roads board. The duties of a district board were to direct and superintend all matters and things relating to the maintaining, repairing, and draining of the turnpike roads in the district, and the execution of any work or improvement placed under their direction and superintendence by the county roads board. Each district board annually elected two members to serve on the county roads board. The tolls received were paid into the county roads fund, and if that were insufficient for the expenses

**Note to
Section 13.**

payable out of it, the quarter sessions had to make a county road rate to supply the deficiency.

By South Wales Highways Act, 1851, the county roads board of each county was required to divide the county into highway districts for the separate management of the ordinary highways therein. For each district a highway board was to be appointed, consisting of the guardians elected for each parish in the district and the resident justices. The Act was repealed by South Wales Highway Act, 1860 (9 Halsbury's Statutes 283), but the repeal did not affect existing districts. The county roads board were empowered to alter districts and appoint surveyors for each district. All land or property which would otherwise have become vested in the surveyor of any parish under Highway Act, 1835 (9 Halsbury's Statutes 50), was transferred to the highway board, which took over the care and management of the ordinary highways. The expenses of maintenance, etc. were chargeable to each parish and levied by a highway rate. Subject to the provisions of the Act and later amending Acts, the Highway Act, 1835, applies to ordinary highways in South Wales.

This section abolished county roads boards, and makes the roads formerly repairable by them county roads. Consequently they are now repairable by the county council under the provisions of s. 11, *ante*, p. 4726, and that section applies in all respects as if these roads had been main roads under the Highway Act of 1878, *ante*, p. 4602.

The effect of s. 25 of the L. G. A., 1894, *post*, p. 4905, was that highway boards in South Wales were superseded by rural district councils. But the powers of rural district councils in relation to highways are now transferred to county councils by s. 30 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904.

(2) *On the appointed day* every county roads board and district roads board (a) in each county shall cease to exist, and the property, debts, and liabilities of any such board shall be transferred to the county council, and that council shall be the successors of the county and district roads boards, and the provisions of this Act, with respect to the transfer of the property, debts, and liabilities of quarter sessions to county councils, and with respect to the officers and servants of quarter sessions, shall apply as if they were herein re-enacted and made applicable to the property, debts, liabilities, and officers of the said county and district roads boards.

(a) See the note to the preceding sub-section.

(3) For the following purposes (that is to say) :

(a) For giving effect to the said transfer of the property, debts, and liabilities, and for controlling the officers and servants transferred by this section to the county council, and otherwise winding up the affairs of the county and district roads boards ; and

(b) For the purpose of the appointment of the surveyor of a highway board, the alteration of a highway district, and other purposes relating to highway boards ;

the county council of every county in South Wales shall have all the powers of a county roads board in a county under the South Wales Turnpike Trusts Act, 1844, and the Acts amending the same, so, however, that nothing shall confer on the county council any power to levy any toll or county road rate.

See generally the notes to sub-s. (1) of this section.

Power to
county

14.—(1) *On and after the appointed day* (a) a county council shall have power, in addition to any other authority, to enforce the provisions

of the Rivers Pollution Prevention Act, 1876 (subject to the restrictions in that Act contained) (b), in relation to so much of any stream as is situate within, or passes through or by, any part of their county, and for that purpose they shall have the same powers and duties as if they were a sanitary authority within the meaning of that Act, or any other authority having power to enforce the provisions of that Act, and the county were their district (c). Section 14.

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council to
enforce
provisions
of Rivers
Pollution
Prevention
Act, 1876.

(a) Repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175). The appointed day was April 1st, 1890 (s. 109, *post*, p. 4769). A county borough council is a county council for this purpose.

(b) The full text of this Act is set out, *ante*, p. 4581.

(c) Parts I. and II. of the Rivers Pollution Prevention Act, 1876, *ante*, p. 4581, relate to pollution of streams by solid matters and sewage. Part III. deals with manufacturing and mining pollution. By s. 6 proceedings shall not be taken under Part III. save by a sanitary authority and with the consent of the L. G. B. If the sanitary authority, on the application of a person interested, refuse to take proceedings, such person may apply to the L. G. B., who, after inquiry, may direct the sanitary authority to take proceedings. The Board are not to give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures, are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry. Any person against whom proceedings are proposed to be taken under Part III. of the Act, notwithstanding any consent of the L. G. B., may object before the sanitary authority to such proceedings being taken, and the authority must if required in writing by such person afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The authority must thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority must determine, having regard to all the considerations to which the L. G. B. are by the section directed to have regard, whether such proceedings shall be taken or not. When any authority has taken proceedings under the Act, no other sanitary authority may take proceedings under the Act, until the party against whom the proceedings are intended has failed in reasonable time to carry out the order of any competent court under the Act. By s. 8, every sanitary authority, subject to the restrictions in the Act, have power to enforce the provisions of the Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against the Act which causes interference with the due flow within their district of any stream or the pollution within their district of any stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority. By s. 13, two months' notice of proceedings under the Act must be given. In the sections above quoted the Minister of Health must now be substituted for the L. G. B.

Effect of
the Rivers
Pollution
Prevention
Act.

The text enables a county council to institute proceedings under the Act, in all cases in which a sanitary authority could do so, and, of course, they can institute proceedings against any sanitary authority in respect of sewage pollution.

Proceedings against a sanitary authority are facilitated by the Rivers Pollution Prevention Act, 1893, *post*, p. 4872, which provides that where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall for the purposes of the Act of 1876 be deemed knowingly to permit the sewage matter so to fall, flow or be carried. See also the P. H. A., 1936, s. 30, *ante*, p. 87, and notes.

(2) Any county council shall have power to contribute towards the costs of any prosecution under the said Act instituted by any other county council or by any urban or rural authority.

**Note to
Section 14.**

Proceedings
under the
Act.

Proceedings under the Rivers Pollution Prevention Act, 1876, are instituted in the county court, subject to power to remove them into the High Court in certain cases (s. 11, *ante*, p. 4593). Though the powers given by the Act are cumulative, and do not affect other remedies, *e.g.*, by way of indictment or injunction (s. 16, *ante*, p. 4595), yet the action in the county court seems to be the only proceeding which can be called "a prosecution under the said Act." It should be added that if default is made in complying with any order of the county court, a penalty not exceeding £50 a day may be imposed, and such penalty is recoverable as a judgment debt (s. 10).

Although the sub-section speaks of a *prosecution*, proceedings in the county court for an order under the Act of 1876 are not of a criminal or penal nature, and interrogatories may be allowed (*Derby Corporation v. Derbyshire C. C.*, [1897] A. C. 550; 13 Digest 499, 492).

(3) The Local Government Board, by Provisional Order (a) made on the application of the council of any of the counties concerned, may constitute a joint committee or other body representing all the administrative counties through or by which a river, or any specified portion of a river, or any tributary thereof, passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the Order (b); and the Order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the administrative counties represented by it, and for the audit of the accounts of such committee or body, and their officers.

(a) A Provisional Order is made under s. 87 of this Act, *post*, p. 4763.

Joint com-
mittees and
rivers
boards.

(b) The powers of a county council under sub-s. (1) are limited to their county. The text enables a joint authority to be appointed for several counties, so as to constitute one authority for an entire river and its tributaries, and that body may, therefore, prevent the pollution of a river at any point of its course.

By a Provisional Order made under this sub-section and duly confirmed by Act of Parliament, the L. G. B. created a joint committee with power to prevent the pollution of the rivers Mersey and Irwell or the tributaries thereof. At the date of this Order the Manchester Ship Canal was in course of construction, and it was held that after the canal was completed it was included under the words "the rivers Mersey and Irwell or the tributaries thereof" (*Mersey and Irwell Watershed Joint Committee v. Salford Corporation* (1895), Times, May 17th).

Other joint rivers committees are—the Ribble Joint Committee and the West Riding of Yorkshire Rivers Board.

Proposed
"central
authority."

The powers of the latter board and of the Mersey and Irwell Joint Committee were somewhat modified and enlarged by the West Riding of Yorkshire Rivers Act, 1894, and the Mersey and Irwell Joint Committee Act, 1892, respectively.

In the third report of the Royal Commission on Sewage Disposal, the commissioners, after recommending the creation of a central authority to determine differences between local authorities and manufacturers in the matter of the disposal of trade refuse and to secure the protection of rivers and other sources of water supply from pollution, advocate the formation of rivers boards throughout the country. The following is an extract from the report:

"Although the rivers boards are merely joint committees of county councils, and therefore only possess for the combined areas the same powers which the individual councils might have exercised in their respective districts, we are satisfied that such combinations are of much greater value for the protection of rivers and streams than the separate councils acting independently.

"In the first place, they are bodies expressly created for enforcing the provisions of the Rivers Pollution Prevention Act, whereas the separate county council is under no obligation to enforce these provisions. And we find as a fact that in

many counties outside the areas represented by the existing rivers boards, little or nothing is done by the county council to exercise its powers of checking river pollution. Note to Section 14.

"Then, too, a rivers board has jurisdiction over practically the whole of a watershed. This is a point of considerable importance.

"It has been again and again pointed out by previous Commissions that to obtain effective action there should be some one authority with power to deal in each instance with the whole watershed, and we entirely concur in this view.

"Another advantage of combination is that the area under the jurisdiction of a rivers board is sufficiently large to secure the appointment of skilled officers.

"We have not sufficient information to enable us to say what precise combinations should be made. Each rivers board district should however include, as far as practicable, the whole of one or more watersheds, and it should be sufficiently large to justify the permanent appointment of a skilled chief inspector at an adequate salary.

"One of the first duties of the central authority will be to ascertain what grouping of counties would be most effective, and then to take steps to constitute rivers boards for these areas."

As to rivers partly in England and partly in Scotland, see the Rivers Pollution Prevention (Border Councils) Act, 1898, *post*, p. 4947.

* * * * *

[Ss. 15—19 repealed, except as to London.]

Financial Relations between Exchequer and County, and Contributions by County for Costs of Union Officers.

20.—(1)—(2) [*Repealed by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883.* Payment to county council of proceeds of duties on local taxation licences.

(3) It shall be lawful for Her Majesty the Queen from time to time by Order in Council made on the recommendation of the Treasury to transfer to county councils as from the date specified in the Order the power to levy the duties on all or any of the local taxation licences, and after such date every county council and their officers shall (subject nevertheless to any exceptions and modifications contained in the Order) have within their county, for the purpose of levying the duties transferred, the same powers, duties, and liabilities as the Commissioners of Inland Revenue and their officers have with respect to the duties transferred, and to the issue and cancellation of licences on which the duties are imposed, and other matters under the Acts relating to those duties and licences, and all enactments relating to those duties and licences, and to punishments and penalties connected therewith, shall apply accordingly.

(4) Provided as follows:—

- (i) All penalties and forfeitures recovered by a county council in pursuance of this section shall, instead of being paid to the Exchequer, be paid to the county fund, and carried to the same account as the duties.
- (ii) The county council shall have, as respects the said duties and licences, the power given by the said Acts to the Treasury for the restoration of any forfeiture, and the mitigation or remission of any penalty or any part thereof.
- (iii) Nothing in this section shall confer on the county council any special privileges of the Crown as regards legal proceedings.

Section 20. (5) On a transfer under this section of the power to levy the duties on any licence—

- (a) the county council shall provide for issuing, in different parts of their county, their licence for the same purpose, so as to enable persons to obtain it near their residences; and
- (b) if such licence has operation in any place in the United Kingdom outside the county in which it is issued, the licence of a county council for the same purpose shall continue to have the like operation outside the county in such place.

[*Ss. 21—27, repealed by the L. G. A., 1929.*]

General Provisions as to Transfer.

General provisions as to powers transferred to county council.

28.—(1) The county council shall, as respects the business by this Act transferred to them from quarter sessions or the justices out of sessions, be subject to the provisions and limitations in this Act specified, but, save as aforesaid, shall have and be subject to all the powers, duties, and liabilities, which the quarter sessions, or any committee thereof, or any justice or justices had or were subject to in respect of the business so transferred.

(2) . . . (a); the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays (b), and in respect of the execution as local authority of the Explosives Act, 1875, or of the Act relating to contagious diseases of animals.

(a) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XL, Pt. III., *ante*, pp. 1195, 1274.

(b) Similarly they made delegate to justices their licensing powers under the Cinematograph Act, 1909 (19 Halsbury's Statutes 352). Petty sessions when exercising such delegated licensing powers cannot state a special case (*Huish v. Liverpool JJ.*, [1914] 1 K. B. 109; 78 J. P. 45; 42 Digest 920, 156).

(3) Provided that the county council shall not under this section delegate any power of raising money by rate or loan.

Summary proceeding for determination of questions as to transfer of powers.

29. If any question arises, or is about to arise, as to whether any business, power, duty, or liability is or is not transferred to any county council or joint committee under this Act, that question, without prejudice to any other mode of trying it, may, on the application of a chairman of quarter sessions, or of the county council, committee, or other local authority concerned, be submitted for decision to the High Court of Justice in such summary manner as subject to any rules of court may be directed by the court; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

This provision has been put in operation in a number of cases where questions have arisen as to the respective liabilities of sanitary authorities and county councils. The practice formerly was to prepare a special case signed by the chairmen of the

Note to
Section 29.

disputing bodies, and then to apply for leave to set down the case in the Crown Paper: see *Ex parte Staffordshire Quarter Sessions*, W. N. (1889), p. 183. Now, however, by a rule of the High Court dated August 10th, 1892, the procedure is to be by special case to be agreed on by the parties, or in default of such agreement to be settled by an arbitrator agreed upon by the parties or (if necessary) appointed by a judge at chambers, or to be settled by a judge at chambers. The special case when settled is to be filed at the Crown Office Department at the central office of the Supreme Court, by the chairman of quarter sessions, the county council, or the local authority concerned, within eight days from the settlement thereof, and is to be put into the Crown Paper for argument as if it were a case stated by justices under Summary Jurisdiction Act, 1857 (11 Halsbury's Statutes 299). Without attempting to give an exhaustive list of the reported cases decided under this section, the following may be mentioned: *Re Somerset C. C.* (1889), 54 J. P. 182; 58 L. J. Q. B. 513; 33 Digest 7, 719; *Ex parte Stafford Quarter Sessions* (1889), 54 J. P. 72; 6 T. L. R. 45; 33 Digest 111, 751; *Re West Riding C. C.* (1890), 54 J. P. 533; 6 T. L. R. 265; 33 Digest 111, 747; *Warminster L. B. v. Wilts C. C.* (1890), 25 Q. B. D. 450; 54 J. P. 375; *Re Cardigan C. C.* (1890), 54 J. P. 792; 33 Digest 413, 1230; *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566; 26 Digest 582, 2724; *Ex parte Kent C. C. and Dover Council*, [1891] 1 Q. B. 389; 55 J. P. 248; *Ex parte Leicestershire C. C.*, [1891] 1 Q. B. 53; 55 J. P. 87; 33 Digest 108, 723; *Re Salop C. C.* (1891), 56 J. P. 213; 65 L. T. 416; 33 Digest 105, 706; *Ex parte Kent C. C.*, [1891] 1 Q. B. 725; 55 J. P. 647; 33 Digest 21, 87; *Montgomeryshire C. C. v. Pryce-Jones* (1892), 57 J. P. 308; 33 Digest 113, 769; *Marlborough Town Council v. Wilts C. C.* (1894), 58 J. P. 213; 26 Digest 396, 1228; *Cornwall C. C. v. Truro Town Council* (1894), 58 J. P. 299; 63 L. J. M. C. 60; 33 Digest 374, 824; *In re Bedfordshire Urban Sanitary Authority*, [1894] 2 Q. B. 786; 58 J. P. 786; 33 Digest 42, 234; *Norfolk C. C. v. Bittering Highway Surveyor* (1894), 58 J. P. 497; 33 Digest 105, 705; *Notts C. C. v. M. S. & L. Rail. Co.* (1894), 71 L. T. 430; 26 Digest 586, 2773; *Re Herefordshire C. C. and Leominster Town Council*, [1895] 1 Q. B. 43; 59 J. P. 38; 33 Digest 374, 825; *Thetford Corporation v. Norfolk C. C.*, [1898] 2 Q. B. 468; 62 J. P. 724; 33 Digest 380, 896; *London Standing Joint Committee v. London C. C.* (1911), 75 J. P. 455; 104 L. T. 923; 33 Digest 108, 720. The court will not under the above section answer abstract questions on the construction of the Act (*Re Cardigan C. C.*, *supra*).

30.—(1) For the purposes of the police, and the clerk of the peace, and of clerks of the justices, and joint officers, and of matters required to be determined jointly by the quarter sessions and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of agreement such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

Standing joint committee of quarter sessions and county council for the purpose of police, clerk of the peace, officers, etc.

(2) The joint committee shall elect a chairman, and, in the case of an equality of votes for two or more persons as chairman, one of those persons shall be elected by lot.

(3) Any matter arising under this Act with respect to the police, or to the clerk of the peace, or to clerks of the justices, or to officers who serve both the quarter sessions or justices and the county council, or to the provision of accommodation for the quarter sessions or justices out of session or to the use by them or the police or the said clerks of any buildings, rooms, or premises, or to the application of the Local Stamp Act, 1869, to any sums received by clerks to justices, or with respect to anything incidental to the above-mentioned matters, and any other

Section 30. matter requiring to be determined jointly by the quarter sessions and county council, shall be referred to and determined by the joint committee under this section; and all such expenditure as the said joint committee determine to be required for the purposes of the matters above in this section mentioned, shall be paid out of the county fund, and the council of the county shall provide for such payment accordingly.

The words in italics were repealed by the L. G. (Clerks) Act, 1931, s. 17 (3), Sched. IV. (24 Halsbury's Statutes 253, 261).

PART II.

APPLICATION OF ACT TO BOROUGHES, THE METROPOLIS, AND CERTAIN SPECIAL COUNTIES.

Application of Act to Boroughs.

Certain large boroughs named in the Schedule to be county boroughs.

31. Each of the boroughs named in the Third Schedule to this Act being a borough which on the first day of June one thousand eight hundred and eighty-eight, either had a population of not less than fifty thousand, or was a county of itself shall, *from and after the appointed day*, be for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, and if a separate commission of assize, oyer and terminer, or gaol delivery is not directed to be executed within the borough, the borough shall, for the purposes of any such commission, and of the service of jurors, and the making of jury lists, be part of the county in which it is specified in the said Schedule to be deemed for the purposes of this Act to be situate.

Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

In addition to the boroughs named in the Third Schedule, *post*, p. 4770, many new county boroughs were created under s. 54 (1) (d) (now repealed), and the present county boroughs are those named in the L. G. A., 1933, Sched. I., Pt. II., *ante*, p. 1197.

The council of a county borough have all or nearly all the powers of a county council, but this only affects their position as an urban authority to the extent hereinafter noticed.

Adjustment of financial relations between counties and county boroughs.

32.—(1) An equitable adjustment respecting the distribution of the proceeds of the local taxation licences, and probate duty grant, and respecting all other financial relations, if any, between each county, and each county borough specified in the said schedule as being deemed for the purposes of this Act to be situate in that county, shall be made by agreement, within twelve months after the appointed day, between the councils of each county and each borough, and in default of any such agreement, by the Commissioners appointed under this Act; and such adjustment shall provide, in the case of any expenses which may in future be incurred by the county wholly or partly on behalf of the borough for the liability of such borough to contribute, and save as

provided by this Act, any existing liability to contribute or to incur expense shall, after the appointed day, cease, and an equitable provision for such cessation shall be made in the adjustment. Section 32.

(2) Where a county borough is specified in the said schedule as being deemed for the purposes of this Act to be situate in more than one county, the necessary adjustment shall be made between the counties.

(3) In such adjustment regard shall be had to the existing property, debts, and liabilities (if any) connected with the financial relations of the county and borough, and to the consideration that the county is not to be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs, and that a county borough is not to be placed in a worse financial position than it would have been in if it had remained part of the county and had shared in the division of the sums received by a county in respect of the licence duties and the probate duty grant, as provided by this Act, and to the amount of benefit and value of the services which the borough receives in return for existing contributions, if any, and to all the circumstances of each case which it appears equitable to consider, subject nevertheless to the following provisions :—

(a) Where separate commissions of assize, oyer and terminer, and gaol delivery are not directed to be executed in a county borough, the borough council shall contribute a proper share of the costs of and incidental to the assizes of the county ;

(b) If the borough is not at the passing of this Act a quarter sessions borough, the borough council shall contribute a proper share of the costs of and incidental to the quarter sessions and petty sessions of the county, and of and incidental to the coroners of the county or any franchise therein, and if a grant of a court of quarter sessions is hereafter made to the borough, the borough shall redeem the liability to such contribution, on such terms as may be agreed upon, or, in default of agreement, may be determined by arbitration under this Act ;

(c) . . . (a) ;

(d) Each county borough shall be liable for the maintenance of pauper lunatics in like manner as any other county.

(4) In the adjustment of any financial relations other than the distribution of the proceeds of the licences and probate duty grant, no borough wholly or partially exempt from contributing to any object shall be rendered liable so to contribute or to contribute in greater proportion than at present.

(5) The provisions of Part III. of this Act with respect to the adjustment of property, income, debts, liabilities, and expenses, and to borrowing for the purpose shall apply as if the Commissioners under this Act were the arbitrator in that Part mentioned.

(6) Provided that at any time after the end of five years from the date of an agreement or award adjusting the financial relations of any county and borough, if the council of either the county or borough satisfy the Local Government Board that the adjustment has become inequitable, and that the councils are unable to agree on a new adjustment, the board shall appoint an arbitrator ; and such arbitrator shall

Section 32. proceed to make a new equitable adjustment as if he were the Commissioners under this Act, and the provisions of this Act shall apply accordingly. Any new adjustment made by agreement, or by the award of an arbitrator under this section, may, after the expiration of five years from the date of such agreement or award, be altered either by agreement or by arbitration as above mentioned.

(7) Until any adjustment in pursuance of this section has come into operation, the county or borough council shall pay out of the county or borough fund to the borough or county council, as the case may be, the average annual amount which during the three years next before the appointed day has been expended by the county for the benefit of the borough, or contributed by the borough to the county, as the case may be, but any sum so paid shall be taken into account in the making of the adjustment, and the adjustment shall be made so as to take effect as from the appointed day.

(8) Any contribution by a county borough to the county in pursuance of this section shall be required and made in accordance with section one hundred and fifty-three of the Municipal Corporations Act, 1882, and that section, except so far as relates to the appointment of an arbitrator, shall apply in like manner as if every such borough were a quarter sessions borough situate in the county.

(9) Expressions in this section relating to contributions by a borough to a county shall be construed to include any sum raised by the assessment of the parishes or hereditaments in the borough to the county rate.

This section, of course, only related to the first adjustment rendered necessary by the establishment of county councils and county borough councils by the Act. Its principles have, however, subsequently been applied in later adjustments. The section was repealed by the L. G. A., 1929, s. 137, Sched. XII., Vol. V., *post*, so far as it relates to the discontinued grants.

As to financial adjustments generally, see notes to L. G. A., 1933, ss. 151, 152, Sched. V., *ante*, pp. 962-973, 1259.

(a) Paragraph repealed by the Lunacy Act, 1890, s. 342, Sched. V. (11 Halsbury's Statutes 133).

Provisions
as to police
and rateable
value in
county
boroughs.

33.—(1) Nothing in this Act with respect to county boroughs shall prevent the continuance of one police force for any county borough and any county, or the consolidation of the police forces of any county borough and any county in like manner as heretofore, but where the provisions of this Act affect the arrangement with respect to the consolidated police force for a county and borough, an adjustment shall be made between the council of the borough and county in accordance with the provisions of this Act. The foregoing provisions of this section shall apply to boroughs which are not county boroughs in like manner as if they were re-enacted and in terms made applicable to those boroughs.

(2) . . . (a).

(a) Sub-s. (2) was repealed (except as to London) by the R. and V. A., 1925, s. 69, Sched. VIII., *ante*, pp. 2233, 2266.

Application
of Act with

34.—(1) The mayor, aldermen, and burgesses of each county borough acting by the council shall, subject as in this Act mentioned, have and

be subject to all the powers, duties, and liabilities of a county council under this Act (in so far as they are not already in possession of or subject to the same), and . . . all the provisions of this Act . . . shall accordingly, so far as circumstances admit, apply in the case of every such borough, with the necessary modifications, and in particular with the following modifications :—

Section 34.

—
modifications
to county
boroughs.

- (a) The county borough shall be substituted for the county, and borough fund shall be substituted for county fund and town clerk shall be substituted for clerk of the peace and clerk of the council ;
- (b) A reference to two or more counties shall include a reference to county boroughs as well as counties ;
- (c) Such powers, duties and liabilities of the court of quarter sessions or justices as in the case of a county are transferred to the county council shall be transferred to the council of the county borough, whether the same are vested in or attached to the court of quarter sessions or justices of the borough or of the county in which the borough is situate.
- (d) . . .
- (e) . . .

Certain words in this sub-section were repealed by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883.

(2) *On the appointed day* there shall be transferred to the mayor, aldermen, and burgesses of each county borough all such bridges and approaches thereto, or parts thereof, situate within the borough as were previously repairable by the county or any hundred therein, and the costs of the council in repairing such bridges and approaches, or parts thereof, and in repairing any roads in the borough which by virtue of this Act or any Act applied by this Act are main roads, shall be payable out of the borough fund.

It is not clear whether the council of a county borough, who have the powers of a county council for most purposes, possess the power of declaring roads to be main roads under the Highway Act of 1878. It is the general opinion that they do not, and the editors have not, in practice, come across any road which has been " mained " in purported exercise of such a power. If the power exists, any roads so declared to be main roads, and roads which prior to the passing of this Act were already main roads, whether under s. 13 or s. 15 of the Highway Act, 1878, had to be repaired at the expense of the borough fund, though the other highways in the borough might have been repairable out of the general district rate under the P. H. A., 1875, s. 210, by the council in their capacity of urban authority. This distinction is now, however, abolished since both the borough rate and borough fund and the general district rate have been consolidated into the general rate and general rate fund under the R. and V. A., 1925, *ante*. p. 2113.

It should be observed that some bridges in the borough may already have been repairable by the council under s. 119 of the Municipal Corporations Act, 1882, *ante*, p. 4638 : see *R. v. Dorset (Inhabitants)* (1881), 45 L. T. 308 ; 26 Digest 574, 2660 ; *R. v. Southampton* (1886), 17 Q. B. D. 424 ; 50 J. P. 773 ; 26 Digest 586, 2766 ; *R. v. Southampton* (No. 2) (1887), 19 Q. B. D. 590 ; *sub nom. R. v. Hampshire (Inhabitants)*, 52 J. P. 52 ; 26 Digest 575, 2672.

(3) The provisions of this Act with respect to—

- (a) . . .

Section 34.

- (b) . . .
- (c) the standing joint committee of the justices and the council, or
- (d) coroners, or
- (e) gas meters, or
- (f) the transfer to the council of powers relating to county and other rates, and the preparation or revision of the basis or standard for the county rate ;

shall not apply to county boroughs, nor shall Part IV. of this Act relating to finance apply, save as far as is expressly provided in that Part.

Paras. (a) and (b) were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(4) Provided that where the district of any county coroner is wholly situate within a county borough, the coroner for that district shall be appointed by the council of that borough, and the writ for his election may be issued to that council instead of to the county council, and where the district of any county coroner is situate partly within and partly without a county borough, the writ for the election of such coroner shall be issued to the county council, but if there is a joint committee of the county and borough councils for the purpose, the question of the person to be elected shall be referred to that joint committee, and the county council shall appoint the person recommended by the majority of such committee.

(5) If the council of a county borough so require, a joint committee shall from time to time be appointed for the purposes of coroners, consisting of such number of members of the county and borough councils as may be agreed upon, or in default of agreement may be determined by a Secretary of State.

(6) [*Repealed by the Representation of the People Act, 1918, s. 47, post, p. 5177.*]

(7) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

(8) This Act and the Municipal Corporations Act, 1882, shall be construed so as to give effect to the provisions of this section.

Application
of Act to
larger quarter
sessions
boroughs
not county
boroughs.

35. In the case of a quarter sessions borough, not being one of the boroughs named in the Third Schedule to this Act, but containing, according to the census of one thousand eight hundred and eighty-one, a population of ten thousand or upwards, the following provisions shall, on and after the appointed day, apply :

- (1) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act, and the parishes in the borough shall, subject to the exemptions hereinafter mentioned, be liable to be

assessed to county contributions in like manner as the rest of the county. Section 35.

In many cases, where the local authorities for the execution of Acts were in counties the quarter sessions, in boroughs the local authorities under the same Acts were the borough councils. In these cases, while the administrative powers of the quarter sessions are transferred to the county councils by this Act, the councils of the larger boroughs to which this section relates, under the provisions in the text, retain their powers as local authorities.

(2) Where such borough is at the passing of this Act exempt, in whole or in part, from contributing towards costs incurred for any purpose for which the quarter sessions of the county in which the borough is situate are authorised to incur costs the parishes in the borough shall not, save as in this Act expressly mentioned, be assessed by the county council to county contributions in respect of costs incurred for any such purpose, nor in the case of a partial exemption, be so assessed for any larger sum than such as will give effect to that exemption, but this exemption shall not extend to any costs incurred for the purpose of any powers, duties, or liabilities of the justices of the borough, which will by virtue of this Act be exercised or discharged by the county council nor to any costs of or incidental to the assizes of the county.

(3) Notwithstanding the last enactment (a) the borough shall, for the purposes of the provisions of the Highways and Locomotives (Amendment) Act, 1878, respecting [county] roads (b), form part of the county, and the costs of maintaining, repairing, improving, enlarging, or otherwise dealing with any [county] road in the borough shall be paid out of the county fund, and the payment of the costs incurred in the execution of the provisions of this Act with respect to [county] roads shall be a general county purpose for which the parishes of the borough may be assessed to county contributions :

(a) This has reference to sub-s. (2), which provides that the borough shall not be liable to be assessed to county contributions for purposes to which it was not liable to be so assessed at the time of the passing of the Act. The exemption extends to the costs of new county bridges taken over by a county council under s. 6, *ante*, p. 4725 (*Bury St. Edmunds (Mayor, etc. of) v. West Suffolk C. C.*, [1898] 2 Q. B. 246 ; 62 J. P. 486 ; 26 Digest 576, 2678).

(b) These provisions are set out, *ante*, p. 4602. Formerly a quarter sessions borough was not a highway area, not being included in the definition of an "urban authority" in the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 4602. Consequently, the provisions of that Act as to [county] roads did not apply to a quarter sessions borough. This is no longer the case. [County] roads in such a borough vest in and are under the control of the county council under s. 11 (1), *ante*, p. 4726, and ss. 29 and 31 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, 905, unless the borough council have claimed or are to be deemed to have claimed their maintenance under s. 32 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 906. These boroughs not being county boroughs are within the definition of "district" in s. 134, *ibid.*, Vol. V. and 10 Halsbury's Statutes 971, and consequently the provisions of Part III. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, as to the transfer of certain highway powers from urban district councils to county councils are applicable to such boroughs.

The word "county" is substituted for "main" in the text by reason of s. 29 (1) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903.

Section 35. (4) Provided that—

- (a) The borough shall be deemed to be an urban sanitary district, within the meaning of the Highways and Locomotives (Amendment) Act, 1878 (*a*); and the council of the borough shall have the power under the Highways and Locomotives (Amendment) Act, 1878, of making byelaws respecting locomotives, and authorising locomotives to be used on any road within the borough (*b*); save that if any difference is made by such byelaws or authority between any [county] road maintained by the county council and the other roads in the borough, such authority and byelaws shall require the approval of the county council; and

(a) See the notes to the preceding sub-section.

(b) The Highways and Locomotives (Amendment) Act, 1878, s. 28 (9 Halsbury's Statutes 182), provides that the council of every borough having a separate court of quarter sessions may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorise such locomotive to be used in any highway within the borough, or part of any such highway under such conditions (if any) as to them may appear desirable. By s. 31, it was formerly provided that a council of a quarter sessions borough might make byelaws as to the hours during which locomotives are not to pass over the turnpike roads or highways within the borough, the hours being in all cases consecutive hours, and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge when they are satisfied that such use would be attended with danger to the public. Section 35, *ante*, p. 4612, required these byelaws to be confirmed by the Local Government Board. But s. 31 was repealed by s. 18 of the Locomotives Act, 1898, subject, however, to certain savings for existing byelaws. And by ss. 5, 6, 9, and 17 of that Act (now repealed) other provision was made for the regulating of locomotives on highways, for the restriction of locomotive traffic by byelaws, and for licensing locomotives.

Light locomotives were exempted from the provisions of the Act of 1878, *supra*, by the Locomotives on Highways Act, 1896 (19 Halsbury's Statutes 64), and other provisions made by that Act for regulating the use of them on highways. See now also the Motor Car Act, 1903, and the Roads Act, 1920, Vol. V., *post*.

- (b) The council of the borough shall have power as an urban authority to claim, in accordance with this Act, to retain the powers and duties of maintaining and repairing any [county] roads in the borough; and

This provision had reference to the claim which an urban authority might make under s. 11 (2), *ante*, p. 4730, which is now repealed by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883. The boroughs not being county boroughs are within the definition of "district" in s. 134 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 971, and are consequently entitled to claim the maintenance of "county roads" in their district under s. 32, *ibid.*, Vol. V. and 10 Halsbury's Statutes 906, if the population exceeds 20,000.

The word "county" is substituted for "main" in the text by reason of s. 29 (1) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903.

- (c) The council of the borough may within two years after the passing of this Act apply to the county council to declare such roads in the borough as are mentioned in the application to be [county] roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider

such application and inquire whether such roads are or ought to be main roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse to make the declaration, the council of the borough may within a reasonable time after such refusal apply to the Local Government Board, and that Board shall have power, if after a local inquiry they think it just so to do, to make the said declaration, which shall have the same effect as if made by the county council.

Section 35.

Immediately after this Act came into operation all roads which had been dis-
turnpiked since December 31st, 1870, became main roads. No declaration was
necessary in the case of such roads. By the text the council of the borough had
until August 13th, 1890, power to apply to the county council to declare certain
other roads to be main roads, *i.e.*, such roads as might be declared main roads under
the Highways and Locomotives (Amendment) Act, 1878, s. 15, *ante*, p. 4606.

By reason of the L. G. A., 1929, s. 29 (1), Vol. V. and 10 Halsbury's Statutes 903,
the word "county" is now substituted for "main" in all references to "main
roads."

- (5) The payment of the costs of assizes and sessions shall be a general
county purpose for which the parishes in the borough may be
assessed to county contributions. . . .

Certain words in this sub-section were repealed by the Costs in Criminal Cases Act,
1908, ss. 4 (4), 10 (1), Sched. (4 Halsbury's Statutes 742, 745).

- (6) . . .

This sub-section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III.,
ante, pp. 1194, 1275.

- (7) The county council and the council of any such borough may
agree for the cessation in whole or in part of any exemption
under this section of the parishes in the borough from assess-
ment to county contributions, in consideration either of pay-
ment by the county council of a capital sum, or of an annual
payment, or of a transfer of property or liabilities, or of the
county council undertaking in substitution for the council of the
borough any powers or duties, or partly for one consideration
and partly for another, or in any other manner, according as
may be determined.
- (8) A borough which is a county of a city or a county of a town
shall, for the purposes of this section, be deemed to be situate
in and form part of the county which it adjoins, or if it adjoins
more than one county, then in and of the county of which it
forms part for the purposes of parliamentary elections.

36.—(1) Where a borough has a separate commission of the peace, whether a quarter sessions borough or not (and is not a borough named in the Third Schedule to this Act), then, subject to the provisions of this Act, all such powers, duties, and liabilities of the court of quarter sessions or justices of the borough, as in the case of the county are by this Act transferred to the county council, shall cease, and the county

General
application
of Act to
boroughs
with separate
commission
of the peace.

Section 36. council shall have those powers, duties, and liabilities within the area of the borough in like manner as in the rest of the county ;

(2) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

Application
of Act to
quarter
sessions
boroughs
hereafter
created.

37. The grant after the passing of this Act of a court of quarter sessions to any borough, not being a county borough, shall not affect the powers, duties, or liabilities of the county council as respects the area of that borough, nor exempt the parishes in the borough from being assessed to county contributions for any purpose to which such parishes were previously liable to be assessed, and shall not confer or impose on the mayor, aldermen, and burgesses, or the council of such borough, any powers, duties, or liabilities further than such as are necessary for establishing and maintaining the court of quarter sessions in the borough.

Application
of Act to
smaller
quarter
sessions
boroughs with
population
under 10,000.

38. Where a borough having a separate court of quarter sessions contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, the following provisions shall *after the appointed day* apply :

(1) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

(2) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(a) As regards coroners ; and

(b) *As regards the appointment of analysts under the Acts relating to the sale of foods and drugs (a) ; and*

(c) Under the Acts relating to—

(i) *Reformatory and industrial schools ; and*

(ii) Fish conservancy ; and

(iii) Explosives ; and

(d) Under the Highways and Locomotives (Amendment) Act, 1878 (b) :

Provided that the transfer by this section—

(a) Shall be subject to the provisions in this Act for the protection of existing officers and the continuance of existing contracts (c) ; and

(b) Shall not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act, 1882 :

The words in italics were repealed (except as to London) by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(a) By the Sale of Food and Drugs Act, 1875, s. 10, analysts were to be appointed by the town council of every borough having a separate court of quarter sessions. That Act is now repealed, and by ss. 64 and 66 of the Food and Drugs Act, 1933, *ante*, pp. 1402, 1404, such appointments are made by the councils of county boroughs and non-county boroughs or urban districts which have according to the last published census for the time being a population of 40,000 or upwards ; in all other cases the appointments are made by the county council. As to enforcing appointments, see s. 65, *ibid.*, *ante*, p. 1403.

(b) These powers include those of authorising or licensing locomotives under ss. 28 and 31 of the Act of 1878 (9 Halsbury's Statutes 182).

**Note to
Section 38.**

(c) The provisions of this Act as to existing officers and the continuance of existing contracts were contained in ss. 118—120, 122, 125. The only officers affected by them whom it is here necessary to refer to are analysts of the boroughs, who by s. 119 became officers of the county council and continued to hold office by the same tenure, on the same terms and conditions and with the like remuneration as formerly. If their office was abolished they were entitled to compensation under s. 120; so also, if their fees or salary were diminished.

- (3) The borough shall be an urban sanitary district within the meaning of the Highways and Locomotives (Amendment) Act, 1878 :
- (4) The council of the borough may within two years after the passing of this Act, apply to the county council to declare such roads in the borough as are mentioned in the application to be [county] roads within the meaning of the Highways and Locomotives (Amendment) Act, 1878, and the county council shall consider such application, and inquire whether such roads are, or ought to be, [county] roads within the meaning of the said Act, and shall make or refuse the declaration accordingly, and if the county council refuse the declaration, the council of the borough may, within a reasonable time after such refusal, apply to the Local Government Board, and that Board, after a local inquiry, shall have power, if they think it just so to do, to make the said declaration, which shall have the same effect as if it had been made by the county council :

The foregoing sub-sections correspond to s. 35 (3) and (4). See those sub-sections and notes thereto, *ante*, pp. 4747—8.

- (5) The area of the borough shall for the purposes of the above-mentioned Acts and all other administrative purposes of the county council be included in the county, as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions :

This provision does not in any way affect the powers and duties of the borough council in their capacity of urban sanitary authority.

- (6) Any property, debts, or liabilities of the county or of any borough affected by this or the next succeeding section (including the charge to be made for lunatics which but for this Act would have been maintainable by the borough) may be adjusted in manner provided by Part Three of this Act :
- (7) It shall be lawful for her Majesty the Queen, on petition from the council of any borough to which this or the next succeeding section applies, by Order in Council, to revoke the grant of a court of quarter sessions to the borough, and by letters patent to revoke the grant of a commission of the peace for the borough, and to make such provision as to her Majesty seems proper for the protection of interests existing at the date of the revocation, and after the date of the revocation all

Section 38.

enactments and laws relating to courts of quarter sessions and justices and their jurisdiction shall apply, as if such court of quarter sessions or commission of the peace, as the case may be, did not exist :

In the event of the revocation of a grant of quarter sessions, any appeal which would otherwise lie to the borough sessions, *e.g.*, under the P. H. A., 1875, s. 269, *ante*, p. 4499, would thereafter lie to the quarter sessions of the county. Another result would be that the county justices would acquire concurrent jurisdiction with the borough justices in the borough in those cases in which such jurisdiction had hitherto been excluded. See the Municipal Corporations Act, 1882, s. 154 (10 Halsbury's Statutes 626).

Concurrent jurisdiction of county and borough justices.

It is generally considered that county justices have concurrent jurisdiction out of quarter sessions with the borough justices—(a) in all boroughs having separate commissions of the peace but not separate courts of quarter sessions [except the boroughs of Coventry, Ramsgate, and Stratford-upon-Avon, where their jurisdiction is excluded by special statutes] ; and (b) in all quarter sessions boroughs from which their jurisdiction is not excluded by the provisions of ancient charters. See a Paper issued from the Home Office in 1904, entitled “Courts of Summary Jurisdiction in England and Wales” ; but see as to grants of quarter sessions since 1835, *R. v. Warwickshire J.J.*, [1902] 2 K. B. 101 ; 33 Digest 381, 905. If the commission of the peace is revoked, the county justices alone will have jurisdiction within the borough. In neither case, however, will the council as urban authority be affected.

- (8) A borough which is a county of a city or a county of a town shall, for the purposes of this and the next succeeding section, and if her Majesty revokes the grant of a court of quarter sessions or a commission of the peace to such borough, then also for all purposes of quarter sessions and justices, be deemed to be situate in and form part of the county of which it forms part for the purpose of parliamentary elections :
- (9) Where this section applies to a cinque port it shall apply also to all the members thereof, and those members when not situate in a quarter sessions borough shall form part of the county for all purposes.

Application of Act to all boroughs with population under 10,000.

39.—(1) Where a borough, whether with or without a separate court of quarter sessions, contained according to the census of one thousand eight hundred and eighty-one a population of less than ten thousand, then after the appointed day all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

- (a) To the police force of the borough, or
- (b) . . . (a), or
- (c) To the execution of the *Contagious Diseases (Animals) Acts*, 1878 to 1886 (b), or the *Destructive Insects Act*, 1877 (c), or
- (d) To gas meters, or
- (e) To weights and measures, if the council exercise any jurisdiction in relation thereto,

shall cease, and, subject to the provisions of this Act as to the members of the police force holding office on the said day, the area of the borough shall for all purposes of the Acts relating to the county police force, or other matters above in this section mentioned, form part of the county in like manner as if it were not a borough :

(a) This sub-paragraph was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

**Note to
Section 39.**

(b) Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175), because these Acts were repealed and consolidated by the Diseases of Animals Act, 1894 (1 Halsbury's Statutes 389); the Diseases of Animals Act, 1894, has itself been in turn amended by the Diseases of Animals Acts, 1896, 1903, 1909, 1910, 1922, 1925, 1927, and the Poultry Act, 1911 (*op. cit.* 424, 425, 426, 429, 436, 438, 439, 428).

(c) This Act has been extended to all pests destructive to crops, trees or bushes: see the Destructive Insects and Pests Act, 1907 (*op. cit.* 69).

(2) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

(3) The urban authority for any borough or town with such population as above in this section mentioned shall cease to be the local authority under the Acts relating to explosives, and the county council shall have the like authority under the said Acts in the said borough or town as they have in the rest of their county.

[Ss. 40—45 (*so far as unrepealed*) relate solely to London. Ss. 46—49 (*so far as unrepealed*) relate solely to the application of the Act to Special Counties and to Liberties. Accordingly these sections are omitted.]

PART III.

Boundaries.

[Ss. 50—57 were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275. S. 58 was repealed by the Poor Law Act, 1927, s. 245, Sched. XI. (12 Halsbury's Statutes 965).]

59.—(1) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

(2) A place which is part of an administrative county for the purposes of this Act shall, subject as in this Act mentioned, form part of that county for all purposes (a), whether sheriff, lieutenant, custos rotulorum, justices, militia, coroner, or other; Provided that—

Supplemental
provisions as
to alterations
of areas.

(a) Notwithstanding this enactment, each of the entire counties of York, Lincoln, Sussex, Suffolk, Northampton, and Cambridge shall continue to be one county for the said purposes so far as it is one county at the passing of this Act; and

(b) This enactment shall not affect the existing powers or privileges of any city or borough as respects the sheriff, lieutenant, militia, justices, or coroner; but, if any county borough is, at the passing of this Act, a part of any county for any of the above purposes, nothing in this Act shall prevent the same from continuing to be part of that county for that purpose; and

(c) This enactment shall not affect parliamentary elections nor the right to vote at the election of a member to serve in Parliament, nor land tax, tithes, or tithe rent-charge, nor the area within which any bishop, parson, or other ecclesiastical person has any cure of souls or jurisdiction.

(a) One result of this provision is to transfer an urban district previously situated in two counties to that county which contained the largest portion of the population

**Note to
Section 59.**

according to the census of 1881. The case of *Re Staffordshire and Derbyshire County Councils* (1890), 54 J. P. 566 ; 26 Digest 582, 2724, may be mentioned as illustrating the effect of such a transfer.

The words "for all purposes" merely mean that a place shall form part of such county for the exercise therein of their respective offices by the officers named : see *Re Local Government Act*, 1888, *Ex parte London C. C.*, [1892] 1 Q. B. 33 ; 56 J. P. 279 ; 13 Digest 233, 16.

(3)—(6) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., Vol. I., pp. 1194, 1275.*]

[*Ss. 60—62 were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

Arbitration
by Local
Government
Board.

63. Where the Local Government Board are required in pursuance of *this Act to decide* any difference or other matter referred to arbitration in pursuance of this Act, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted, and in terms made applicable to the Local Government Board and the decision of differences and matters under this Act.

For the Local Government Board must now be read the Ministry of Health.

For the words in italics there must now, under the Local Government (Determination of Differences) Act, 1896, *post*, p. 4938, be substituted the words "determine as arbitrators."

It is therefore only where the Ministry "determines as arbitrators" that this section applies. Where the Ministry determine otherwise than as arbitrators they proceed under s. 87, *post*, p. 4763.

The provisions of the Regulation of Railways Act, 1868 (14 Halsbury's Statutes 176), above referred to, are contained in ss. 30—32 of that Act (*op. cit.* 184), which are set out in full, *ante*, p. 4264. Under these, as applied by the above section, the L. G. B. (now the M. of H.) may appoint an arbitrator whose award or decision may be that of the Board. The Board may fix the remuneration of the arbitrator. Section 32 incorporates the Railway Companies Arbitration Act, 1859, ss. 18—29 (*op. cit.* 115—117), the effect of which is shortly as follows : Section 18 empowers the arbitrator to call for books and documents and to administer oaths. Section 19 gives him discretion as to the manner of proceeding with the arbitration. Section 20 enables him to proceed in the absence of parties. Section 21 enables him to make several awards each on part of the matters referred. Section 22 makes the award conclusive. Section 23 gives the arbitrator power to extend the time for making an award. Section 24 prevents the setting aside of an award for irregularity. Section 25 provides that parties shall obey award. Section 26, that all courts shall give effect to awards. Section 27, that costs shall be in the discretion of the arbitrator. Section 28, that in the absence of any order, costs are to be borne by parties equally. Section 29, that submission may be made a rule of court.

PART IV.

FINANCE.

Property Funds and Costs of County Council.

Transfer
of county
property and
liabilities.

64.—(1) . . . all property of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer, or commissioners, or otherwise for any public uses and purposes of a county, or any division thereof, shall pass to and vest in

and be held in trust for the council of the county, subject to all debts and liabilities affecting it, and shall be held by the county council for the same estate, interest, and purposes, and subject to the same covenants, conditions, and restrictions, for and subject to which that property is or would have been held if this Act had not passed, so far as those purposes are not modified by this Act: Provided that—

- (a) the existing records of or in the custody of the court of quarter sessions shall, subject to any order of that court, remain in the same custody in which they would have been if this Act had not passed; and
- (b) where any property belongs to a charity, nothing in this Act shall affect the trust of such charity, and until otherwise directed by the Charity Commissioners . . . , the trustees or managers of the charity shall be appointed in like manner as if this Act had not passed; and
- (c) the justices of any county may retain any pictures, chattels, or property on the ground that the same have been presented to them or purchased out of their own funds or otherwise belong to them, and are not held for public purposes of the county. . . .

Certain words in this sub-section were repealed by S. L. R. A., 1908.

(2) . . . all debts and liabilities of the quarter sessions, or of the clerk of the peace, or any justice or justices, or treasurer, or commissioners, incurred for county purposes, shall become debts and liabilities of the county council, and shall, subject to the provisions of this Act, be defrayed by them out of the like property and funds out of which they would have been defrayed if this Act had not passed.

Certain words in this sub-section were repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

(3) The county council . . . shall provide such accommodation and rooms, and such furniture, books, and other things as may from time to time be determined by the standing joint committee of quarter sessions and the county council, to be necessary or proper for the due transaction of the business, and convenient keeping of the records and documents, of the quarter sessions and justices out of sessions, or of any committee of such quarter sessions or justices.

Certain words in this sub-section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(4) This section shall apply, with the necessary modifications, to the administrative counties of Sussex and Suffolk.

(5) This section shall apply in the case of the property, debts, and liabilities of the justices of all the ridings and divisions of the counties of York or Lincoln at their gaol sessions, or of commissioners appointed by the justices, in like manner as if it were herein re-enacted with the substitution of gaol sessions or commissioners for quarter sessions, and of clerk of gaol sessions for clerk of the peace, and as if the joint committee of the councils of the three ridings or divisions were the council of the county; and the said joint committee shall, for the purposes of the said property, debts and liabilities, and for the transaction of the

Section 64. administrative business and execution of their duties under this Act, be a body corporate, with perpetual succession and a common seal, by the name of the county committee, with the prefix of the name of the county, and with power to acquire and hold land for the purposes of their constitution without licence in mortmain.

(6) The county council of the soke of Peterborough shall be liable to repair the county bridges in the soke, and if any costs are incurred by the county council of the county of Northampton for the benefit of the soke, an adjustment thereof shall be made by agreement, or by arbitration in manner provided by this Act.

[S. 65 was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.]

Costs of justices to be payable out of county fund.

66. All costs incurred by the quarter sessions or the justices out of session of a county, and all costs incurred by any justice, police officer, or constable, in defending any legal proceedings taken against him in respect of any order made, or act done, in the execution of his duty as such justice, police officer, or constable shall, to such amount as may be sanctioned by the standing joint committee of the county council and quarter sessions, and, so far as they are not otherwise provided for, be paid out of the county fund of the county, and the council of the county shall provide for such payment accordingly.

Adjustment of law as respects costs ordered by quarter sessions or justices to be paid.

67. Any order of a court of quarter sessions, or of any justices or justice out of session, for the payment by the county treasurer of costs in criminal proceedings or of costs under the Burial of Drowned Persons Act, 1808, shall be obeyed by the county treasurer in like manner as heretofore. . . .

Certain words in this section were repealed by the Costs in Criminal Cases Act, 1908 (4 Halsbury's Statutes 739).

[S. 68 was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.]

Borrowing by county council.

69.—(1) The county council may from time to time, with the consent of the Local Government Board, borrow . . .

(d) for making advances (which they are hereby authorised to make) to any persons or bodies of persons, corporate or unincorporate, in aid of the emigration or colonisation of inhabitants of the county, with a guarantee for repayment of such advances from any local authority in the county, or the Government of any colony. . . .

The residue of this sub-section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.

(2) [Repealed by the L. G. A., 1929, s. 137, Sched. XII., Pt. V., Vol. V., post.]

(3)—(8) [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.]

(9) [Repealed by the County Councils Mortgages Act, 1909, s. 1 (10 Halsbury's Statutes 845).]

(10) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, Section 69, pp. 1194, 1275.*]

(11) The provisions of this section which authorise advances in aid of the emigration or colonisation of inhabitants of the county, and borrowing for those advances, . . . shall extend to the councils of boroughs mentioned in the Third Schedule to this Act.

Certain words in this sub-section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(12) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

[*Ss. 70, 71, repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

72. The Local Government Board shall exercise as regards any county borough, or other borough, the powers conferred by Part V. of the Municipal Corporations Act, 1882, relating to corporate property and liabilities, as respects the approval of loans and of the alienation of property, and other matters therein mentioned, and that Part shall . . . be construed as if "Local Government Board" were throughout that Part substituted for "Treasury."

Certain words in this sub-section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

[*Ss. 73, 74, repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

PART V.

SUPPLEMENTAL.

Application of Acts.

75. For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act, 1882, namely, . . . (a) Part Four (as amended by the Municipal Elections (Corrupt Practices) Act, 1884), section one hundred and twenty-four in Part Five, Part Twelve, Part Thirteen, . . . (a) shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same in such terms and with such modifications as are necessary to make them applicable to the said councils and their chairmen, members, committees, and officers, and to the other provisions of this Act.

Provided as follows:—

(1) . . . (b).

(2)—(4) . . . (c).

Section 75.

- (5) A reference in the said enactments to the town clerk . . . (a) shall be construed to refer to the clerk of the county council.
- (6) . . . (b).
- (7)—(8) . . . (c).
- (9) . . . (b).
- (10)—(11) . . . (c).
- (12) . . . (d).
- (13) . . . (b).
- (14)—(15) . . . (c).
- (16) Nothing in the Municipal Corporations Act, 1882, as applied by this section—
- (a) shall alter the application of any fine, penalty, or forfeiture recoverable in a summary manner; or,
- (b) shall apply . . . (a) any of the following provisions, namely, . . . (a) section two hundred and fifty-one, or section two hundred and fifty-seven; or
- (c) . . . (c); or
- (d) . . . (b); or
- (e) . . . (c); or
- (f) shall require the acts and proceedings of the standing joint committee of the county council and quarter sessions to be submitted to the county council for their approval; or
- (g) . . . (c).
- (17)—(21) . . . (c).

(a) Certain words here were repealed by the L. G. A., 1933, s. 307, Sched. XI, Pt. III., *ante*, pp. 1194, 1275.

(b) Paragraph repealed by the County Councils (Elections) Act, 1891, s. 7.

(c) Paragraph repealed by the L. G. A., 1933, s. 307, Sched. XI, Pt. III., *ante*, pp. 1194, 1275.

(d) Paragraph repealed by the Representation of the People Act, 1918, s. 47, *post*, p. 5177.

[*Ss. 76, 77, repealed by the Representation of the People Act, 1918, s. 47, post, p. 5177.*]

Construction
of Acts
referring to
business
transferred.

78.—(1) All enactments in any Act, whether general or local and personal, relating to any business, powers, duties or liabilities transferred by or in pursuance of this Act from any authority to a county council, either alone or jointly with the quarter sessions, or to any joint committee, shall, subject to the provisions of this Act, and so far as circumstances admit, be construed as if—

- (a) any reference therein to the said authority or to any committee or member thereof or to any meeting thereof (so far as it relates to the business, powers, duties or liabilities transferred) referred to the county council or to a committee or member thereof or to a meeting thereof, as the case requires, and as if—
- (b) a reference to any clerk or officer of such authority referred to the clerk or officer of a county council or committee thereof, as the case requires,

and all the said enactments shall be construed with such modifications as may be necessary for carrying this Act into effect. Section 78.

(2) Provided that the transfer of powers and duties enacted by this Act shall not authorise any county council or any committee or member thereof—

- (a) to exercise any of the powers of a court of record ; or
- (b) to administer an oath ; or
- (c) to exercise any jurisdiction under the Summary Jurisdiction Acts, or perform any judicial business, or otherwise act as justices or a justice of the peace

but this enactment shall be without prejudice to the position of the chairman of the county council as justice of the peace during his term of office.

(3) Where under any such enactment as in this section mentioned, any powers, duties, or liabilities are to be exercised or discharged after any presentment or in any particular manner, or at any particular meeting, or subject to any other conditions, the county council may, by the standing orders for the regulation of their proceedings, provide for the exercise and discharge of those powers, duties, and liabilities without any such prior presentment or in a different manner, or at any meeting of the council fixed by the standing orders, or without such other conditions ; and until such standing orders take effect shall exercise and discharge them in the like manner, and at the like time, and subject to the like conditions, so nearly as circumstances admit ; and a presentment by a grand jury in relation to any such powers, duties, or liabilities, shall cease to be made otherwise than by way of indictment.

(4) For the purposes of this section the expression “ authority ” means a Secretary of State, the Board of Trade, the Local Government Board, and any Government Department, also any commissioners, conservators, or public body, corporate or unincorporate, specified in a Provisional Order transferring any powers, duties, or liabilities to the county council, also any quarter sessions and any justices, also the Metropolitan Board of Works, or other local authority mentioned in this Act ; and the expression “ member of an authority ” includes, where the authority are quarter sessions or justices, any justice, and the expression “ meeting of an authority ” includes a court of quarter sessions and the assembly of justices in special or petty sessions ; and the expression “ clerk of an authority ” includes in relation to any quarter sessions or justices, the clerk of the peace or the clerk to a justice as the case requires.

This section shall apply as if a joint committee were a committee of the county council.

Proceedings of Councils and Committees.

79.—(1) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*] Incorporation of county council.

(2) All duties and liabilities of the inhabitants of a county shall become and be duties and liabilities of the council of such county.

Section 79.

(3) Where any enactment (whether relating to *lunatic asylums or bridges*, or other county purposes, or to quarter sessions) requires or authorises land to be conveyed or granted to, or any contract or agreement to be made in the name of, the clerk of the peace, or any justice or justices or other person, on behalf of the county or quarter sessions, or justices of the county, such land shall be conveyed or granted to, and such contract and agreement shall be made with, the council of the administrative county concerned.

The words in italics in sub-s. (3) were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

[S. 80 repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.]

Appointment
of joint
committees.

81.—(1) Any . . . (a) court or courts of quarter sessions, may from time to time join in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested.

(2) Any . . . (a) court taking part in the appointment of any joint committee under this section, may from time to time delegate to the committee any power which such . . . (a) court might exercise for the purpose for which the committee is appointed.

(3) . . . (b).

(4) Subject to the terms of delegation, any such joint committee shall, in respect of any matter delegated to it, have the same power in all respects as the . . . (a) courts appointing it, or any of them, as the case may be.

(5) The members of a joint committee appointed under this Act shall be appointed at such times and in such manner as may be from time to time fixed by the . . . (a) court who appointed them, and shall hold office for such time as may be fixed by the . . . (a) court who appointed them, so that where any members of the committee were appointed by the county council, such committee do not continue for more than three months after any triennial election of councillors of such county council.

(6) . . . (b).

(7) . . . (a) a standing joint committee may be appointed for two or more administrative counties, inclusive of county boroughs, and the members of such joint committee shall be appointed by the several quarter sessions and councils in such proportion and manner as they respectively may arrange, and in default of arrangement as may be directed by a Secretary of State.

(8) This section shall apply to the standing joint committees.

(a) Words repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(b) Paragraph repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

Proceedings
of com-
mittees.

82.—(1) A county council appointing under this Act any committee may from time to time make, vary, and revoke regulations respecting the quorum and proceedings of such committee, and as to the area (if any) within which it is to exercise its authority; and subject to such

regulations the proceedings and quorum and the place of meeting whether within or without the county, shall be such as the committee may from time to time direct, and the chairman at any meeting of the committee shall have a second or casting vote. Section 82.

(2) Every committee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act, 1882, to be submitted to the council for their approval.

(3) In the case of a joint committee the councils and courts appointing the joint committee shall jointly have the powers given by this section, and the provisions of this section shall apply accordingly.

This section has been repealed by the L. G. A., 1933, s.307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275, except so far as it applies to joint committees appointed under s. 81.

Officers.

83. Subject to the provisions of this Act for the protection of clerks of the peace holding office at the passing of this Act, the following provisions shall have effect :— Clerk of the peace and of county council.

(1)—(3) . . . (a).

(4) The joint committee may appoint a deputy clerk to hold office during their pleasure, and to act in lieu of such clerk in case of his death, illness, or absence, or in such other cases as may be determined by the joint committee, and wherever the deputy so acts, all things authorised or required to be done by, to, or before the clerk of the peace, or clerk of the county council, may be done by, to, or before any such deputy ; without prejudice to the appointment of a deputy clerk for the purpose of a second court on the division of the court of quarter sessions for judicial business (b).

(5) . . . (a).

(6) . . . (c).

(7) The office of clerk of the peace of each of the administrative counties of Sussex and Suffolk shall be a separate office ; but nothing in this Act shall prevent the same person from being appointed to both such offices ; and the justices in general sessions assembled for the entire county of Sussex or Suffolk may from time to time appoint the person who is clerk of the peace for either administrative county to be clerk of the peace of such general sessions, and may remove such clerk, and the remuneration to be paid to such clerk shall be determined jointly by the standing joint committees for the administrative counties.

(8) The existing records of the county of Sussex and of the county of Suffolk shall, subject to the order of quarter sessions, continue to be kept by the clerk of the peace of East Sussex and by the clerk of the peace for East Suffolk respectively.

(9) . . . (a).

- Section 83.** (10) The joint committee of the councils of the three ridings or divisions of Yorkshire and Lincolnshire may from time to time appoint a clerk of such joint committee, and may from time to time remove such clerk.
- (11) [*Relates only to London.*]
- (12) . . . (c).
- (13) Provided always, that no paid clerk or other paid official in the permanent employment of a county council who is required to devote his whole time to such employment shall be eligible to serve in Parliament.
- (a) Paragraph repealed by the L. G. (Clerks) Act, 1931, s. 17 (3), Sched. IV. (24 Halsbury's Statutes 253, 261).
- (b) This paragraph has been repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275, so far as it relates to the office of deputy clerk of a county council.
- (c) Paragraph repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

Appointment
of the
justices'
clerks and
clerks of
committees.

84.—(1) The salaried clerk of every petty sessional division shall be from time to time appointed, and removed, as heretofore.

(2) The county council shall pay to the salaried clerks of petty sessional divisions such salaries as may be fixed under the enactments relating to those clerks, and all fees and costs payable to such clerks which are not excluded in the fixing of their salaries shall be paid into the county fund, and in the enactments relating to such salaries and fees the standing joint committee shall be substituted for the quarter sessions justices and the local authority respectively.

Regulations for Bicycles, etc.

Regulations
for bicycles,
etc.

85.—(1) . . . (a) bicycles, tricycles, velocipedes, and other similar machines (b) are hereby declared to be carriages within the meaning of the Highway Acts (c) ;

(a) Certain words in this section have been repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175), the Road Transport Lighting Act, 1927, Vol. V., *post*, the Road Traffic Act, 1930 (23 Halsbury's Statutes 607), and the L. G. A., 1933, *ante*, p. 735. The Highways and Locomotives (Amendment) Act, 1878, s. 26 (5), enabled a county authority to make byelaws regulating the use of bicycles. The Municipal Corporations Act, 1882, s. 23 (10 Halsbury's Statutes 584), enables the council of a borough to make byelaws for the good rule and government of the borough, and for the prevention and suppression of nuisances not otherwise summarily punishable in the borough ; and under this section byelaws regulating the use of bicycles and tricycles were made in many boroughs. These byelaws varied greatly ; not only were they different in different counties, but county byelaws were in many cases different from those in force in the various boroughs within the county, and these again from one another. The text repeals the above sections so far as regards the power to make byelaws for bicycles, tricycles, etc., and substitutes a general enactment for the byelaws previously in force. And it is to be observed that when a byelaw is made under an Act the repeal of the Act abrogates the byelaw unless it is preserved by means of a saving clause or otherwise. Thus a byelaw relating to bicycles made under a local Act was held to be repealed by the provision in the text (*Watson v. Winch*, [1916] 1 K. B. 688 ; 80 J. P. 149 ; 42 Digest 773, 2015).

By the Lights on Vehicles Act, 1907, existing byelaws with regard to the lighting of vehicles (other than, *inter alia*, bicycles, tricycles, or velocipedes), which varied

Note to
Section 85.

considerably in different districts, were replaced by a statutory requirement applying uniformly throughout the country. This Act and para. (a) of the sub-section in the text were, however, repealed by the Road Transport Lighting Act, 1927, s. 11, and Schedule, Vol. V., *post*. The last-named Act now prescribes a statutory code for the lighting of all types of vehicles which is uniform throughout the country.

(b) The Highways and Locomotives (Amendment) Act, 1878, s. 26 (9 Halsbury's Statutes 181), referred only to bicycles, and it was generally understood that the county byelaws did not extend to tricycles. The text avoids possibility of doubt on the subject.

(c) It had already been held that a bicycle was a carriage within the meaning of the Highway Act, 1835, s. 78 (9 Halsbury's Statutes 91), and that its rider might be convicted under that section of furious "driving" of it (*Taylor v. Goodwin* (1879), 4 Q. B. D. 228; 43 J. P. 653; 26 Digest 438, 1553). But in a later case it was held that a bicycle was not a carriage liable to toll under a Turnpike Act (*Williams v. Ellis* (1880), 5 Q. B. D. 175; 44 J. P. 394; 26 Digest 348, 754). *Cf. Parkyn v. Preist* (1881), 7 Q. B. D. 313; 45 J. P. 751; 42 Digest 863, 147. The text now expressly declares that they shall be deemed to be carriages within the meaning of the Highway Acts. As such they are subject to various provisions which impose penalties for such offences as negligently, or by wilful misbehaviour, causing hurt to any person, horse, cattle, or goods; not keeping the left or near side of the road on meeting any other carriage; negligently, or by wilful misbehaviour, preventing the free passage of any person, carriage, etc.; driving furiously so as to endanger the life or limb of any passenger. See *McKee v. McGrath* (1892), 30 L. R. Ir. 41; *Yeldham v. Carpenter* (1913), 47 I. L. T. 186; and *Chatterton v. Parker*, [1914] W. N. 206; 78 J. P. 339; 26 Digest 438, 1558, as to furious driving; and *cf.* the Locomotives on Highways Act, 1896, s. 1 (1) (b) (19 Halsbury's Statutes 64), as to light locomotives; *Smith v. Boon* (1901), 65 J. P. 486; 84 L. T. 593; 42 Digest 872, 208; and *Mayhew v. Sutton* (1901), 71 L. J. K. B. 46; 86 L. T. 18; 42 Digest 872, 210.

The provision in the text does not, however, remove difficulties which arise in the construction of private Acts. See *Cannan v. Abingdon (Earl of)*, [1900] 2 Q. B. 66; 64 J. P. 504; 26 Digest 348, 755; *Simpson v. Teignmouth and Shaldon Bridge Co.*, [1903] 1 K. B. 405; 67 J. P. 65; 26 Digest 348, 756; *Smith v. Kynnersley*, [1903] 1 K. B. 788; 67 J. P. 125; 26 Digest 348, 757.

A bicycle has been held to be a "vehicle" within the meaning of a local Act against the use of vehicles for the display of advertisements without the consent of the local authority (*Ellis v. Nott-Bower* (1896), 60 J. P. 760; 13 T. L. R. 35; 42 Digest 846, 36); and within the meaning of the Offences against the Person Act, 1861, s. 35 (4 Halsbury's Statutes 610) (*R. v. Parker* (1895), 59 J. P. 793; 15 Digest 863, 9475).

It has been held that a motor bicycle is a carriage within the meaning of the Customs and Inland Revenue Act, 1888, s. 4 (3) (16 Halsbury's Statutes 577) (*O'Donoghue v. Moon* (1904), 68 J. P. 349; 90 L. T. 843; 39 Digest 238, 126).

Adaptation of Acts.

86. For the purpose of adapting the Acts relating to pauper lunatic asylums to the provisions of this Act, the following provisions shall have effect:—

(1)—(4) [*Repealed by the Lunacy Act, 1890, s. 342 (11 Halsbury's Statutes 133).*]

(5) Any asylum provided in whole or in part at the cost of a county shall for the purposes of this Act be included in the expression "county lunatic asylum."

(6)—(8) [*Repealed by the Lunacy Act, 1890, s. 342 (11 Halsbury's Statutes 133).*]

87.—(1) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, Application of provisions of ss & 39 Vict. c. 55,

Meaning of
"county
lunatic
asylum."

Section 87. or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, . . . (a).

as to local
inquiries and
Provisional
Orders.

This sub-section and sub-s. (5) (now repealed) were applied by the Education Act, 1921, s. 157 (7 Halsbury's Statutes 208), to any order, consent, sanction, or approval which the Minister of Health is authorised to make or give under that Act. The same sub-sections are made applicable by the Local Authorities (Treasury Powers) Act, 1906, s. 1 (4), *post*, p. 5026, with a view of enabling the L. G. B. (now the M. of H.) to carry out the powers transferred to them by that Act.

(a) The residue of this sub-section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

(2) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875 (which relate to the making of Provisional Orders by the Local Government Board), shall apply for the purposes of this Act as if they were herein re-enacted, and in terms made applicable thereto.

See the sections above referred to, *ante*, pp. 4507—8.

It was held that the above sub-section had the effect of bringing the costs incurred in opposing a Provisional Order Bill within the saving enacted by the Borough Funds Act, 1872, s. 8 (10 Halsbury's Statutes 561) (*Brooks, Jenkins & Co. v. Torquay Corporation*, *ante*, p. 1135).

Most Provisional Orders to which this sub-section relates are made under s. 54 for the extension of boroughs. The M. of H. closely scrutinize the expenses before sanctioning them as "reasonable," and first require the Bills to be submitted to the parliamentary taxing officers.

The provision applies to Provisional Orders refused as well as those issued.

The costs of parish councils as well as those of urban and rural district councils in opposing Provisional Orders under the Act must now be sanctioned.

(3) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

(4) Where any matter is authorised or required by this Act to be prescribed, and no other provision is made declaring how the same is to be prescribed, the same shall be prescribed from time to time by the Local Government Board.

(5) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

[*Ss. 88—91 relate only to London and Middlesex.*]

Savings.

Savings for
votes at any
parlia-
mentary
elections.

92.—(1) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

(2) Where by virtue of the provisions of this Act with respect to the county of London, or to urban sanitary districts situate partly within and partly without the boundary of a county, a place situate in a parliamentary county becomes part of the county of a council other than the council having authority over the largest part of the parliamentary county, that is to say, the part which contains the largest number of . . . (a) voters, then, for the purpose . . . (a) of polling districts, and assigning polling places, and for all purposes of and inci-

dental to such matters, including the payment of expenses, such place shall be deemed to be part of the same county as the said largest part of the said parliamentary county, and the sheriff, council, clerk of the peace, authorities, and officers of that county shall have authority accordingly in the said place, and the provisions of the Registration Act, 1885, with respect to parliamentary counties extending into more county quarter sessional areas than one, shall apply with the necessary modifications. Section 92.

(3) [*Repealed by the Representation of the People Act, 1918, s. 47, post, p. 5177.*]

[*Ss. 93, 94, so far as unrepealed, relate only to London. S. 95, only to Middlesex, Surrey and Kent. And s. 96 only to the Middlesex Land Registry.*]

97. Nothing in his Act with respect to [county] roads shall alter the liability of any person or body of persons, corporate or unincorporate, not being a highway authority, to maintain and repair any road or part of a road. Saving as to liability for [county] roads.

This section was inserted to preserve the liability of persons or corporations to repair roads which have or may become county roads under the Highways and Locomotives (Amendment) Act, 1878 (9 Halsbury's Statutes 166), when such roads were previously repairable by them *ratione tenuræ* or by prescription, or under an Act of Parliament, such as the Railway Clauses Acts, which impose on railway companies the duty of repairing roads in some cases.

The word "county" is substituted for "main" by reason of s. 29 (1) of the L. G. A., 1929, Vol. V., *post*. A similar provision under the L. G. A., 1929, is contained in s. 38 (1), Vol. V. and 10 Halsbury's Statutes 913.

98. Notwithstanding anything in the foregoing sections of this Act, the Commissioners of Inland Revenue and the Commissioners of Customs, and the officers of those Commissioners respectively, shall have the same powers in relation to any articles subject to any duty of customs or excise, manufactured, imported, kept for sale, or sold, and any premises where the same may be, and to any machinery, apparatus, vessels, utensils, or conveyances used in connexion therewith or the removal thereof, and in relation to the person manufacturing, importing, keeping for sale, or having the custody of the same, as they would have had if this Act had not passed, and any licences transferred in pursuance of this Act had continued to be granted by the Commissioners of Inland Revenue. Saving for powers of Commissioners of Inland Revenue and Customs.

Definitions.

[*S. 99 was repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).*]

100. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say: Interpretation of certain terms in the Act.

The expression "county" does not include a county of a city or county of a town:

The expression "entire county" means, in the case of a county divided into administrative counties, the whole of the county formed by those administrative counties:

- Section 100.** The expression "division of a county," in the provisions of this Act respecting the property of quarter sessions, includes any hundred, lathe, wapentake, or other like division :
- The expression "administrative county" means the area for which a county council is elected in pursuance of this Act, but does not (except where expressly mentioned) include a county borough :
- The expression "metropolis" means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, as amended by subsequent Acts :
- The expression "borough" means any place for the time being subject to the Municipal Corporations Act, 1882, and any reference to the mayor, aldermen, and burgesses of a borough shall include a reference to the mayor, aldermen, and citizens of a city :
- The expression "quarter sessions borough" means a borough having a separate court of quarter sessions and includes a county of a city and a county of a town, subject to the Municipal Corporations Act, 1882 :
- The expression "quarter sessions" as respects any county, riding, division, or liberty, means the justices in quarter or general sessions assembled, and includes justices assembled in gaol sessions, annual general sessions, and adjourned sessions, and as respects any borough, means any court of quarter or general sessions held for the borough or for any county of a city or town consisting of the borough, whether held by the recorder or by justices, and as respects the city of London, means the court of the mayor and aldermen in the inner chamber :
- The expression "parish" means a place for which a separate overseer is or can be appointed, and where part of a parish is situate within, and part of it without, any county, borough, urban sanitary district, or other area, means each such part (a) :*
- The expressions "parliamentary county," and "parliamentary election," and "parliamentary voters," have the same meaning as in Registration Act, 1885, and the Acts therein referred to :
- The expression "Secretary of State" means one of her Majesty's Principal Secretaries of State :*
- The expression "Treasury" means the Commissioners of her Majesty's Treasury :*
- The expression "Bank of England" means the Governor and Company of the Bank of England :*
- The expression "existing" means existing at the time specified in the enactment in which the expression is used, and if no such time is expressed, then at the day appointed to be for the purpose of such enactment the appointed day (b) :
- The expression "guardians" means guardians elected under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other bodies of persons performing under any local Act the like functions to guardians under the Poor Law Amendment Act, 1834 (c) :

The expression "poor law union" means any parish or union of parishes for which there is a separate board of guardians (d) : Section 100.

The expressions "district council" (e) and "county district" (e) mean respectively any district council established for purposes of local government under an Act of any future session of Parliament, and the district under the management of such council, and until such council is established, mean respectively :

(a) as regards the provisions of this Act relating to highways and main roads, a highway authority and highway area ; and

(b) save as aforesaid, an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and the district of such authority :

The expression "highway area" means, as the case may require, an urban sanitary district (f), a highway district, or a highway parish not included within any highway or urban sanitary district :

The expression "highway authority" means, as respects an urban sanitary district, the urban sanitary authority, and as respects a highway district, the highway board (g), or authority having the powers of a highway board, and as respects a highway parish, the surveyor or surveyors of highways or other officers performing similar duties :

The expression "urban authority" means, until the establishment of district councils as aforesaid, an urban sanitary authority ; and after their establishment, the district council of an urban county district :

The expression "rural authority" means, until the establishment of district councils as aforesaid, a rural sanitary authority ; and, after their establishment, the district council of a rural county district :

The expression "person" includes any body of persons, whether corporate or unincorporate :

Any expression referring to the value of any parish, borough, or area as ascertained by the standard or basis for the county rate or contributions shall, where any rateable value has been fixed by agreement between the councils of any county and county boroughs, be that value, and subject thereto shall, in the case of any parish, borough, or area for which there is no such standard or basis, refer to the total rateable value as determined by the last valuation lists, or if there is no valuation list, by the last poor rates for such parish or the parishes comprised in such borough or area ; and where an area is authorised or directed by this Act to be assessed to any contributions or rates, the same shall, unless otherwise provided by law, be assessed according to the standard or basis for the county rate :

The expression "property" includes all property, real and personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents ; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested in, or held in

Section 100.

trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority; and the expression "property" shall further include, in the case of the county of Chester, any surplus revenue of the River Weaver Trust, which is or would but for this Act be payable to the quarter sessions (h) :

The expression "powers" includes rights, jurisdiction, capacities, privileges, and immunities :

The expression "duties" includes responsibilities and obligations :

The expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose (h) :

The expression "powers, duties, and liabilities," includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act :

The expression "expenses" includes cost and charges :

The expression "costs" includes charges and expenses :

The costs of assizes and of quarter and petty sessions includes such of the following costs as are applicable, that is to say, the costs of maintaining and providing the courts and offices and the judges' lodgings, the salaries and remuneration of a chairman of quarter sessions, clerks of assize, clerks of the peace, clerks of the justices, and other officers, the costs of the jury list, the costs of rewards ordered to be paid by the court, the costs of prosecutions including the costs of the defendant's witnesses, and all other costs incidental to the assizes, quarter sessions, petty sessions, or the judges, *but nothing shall require a quarter sessions borough to contribute towards the costs of prosecutions at assizes except in the case of prisoners committed for trial from the borough :*

The expression "assizes" includes the Central Criminal Court :

The expression "pension" includes any superannuation allowance, gratuity, or other payment made on the retirement of any officer :

The expression "office" includes any place, situation, or employment, and the expression "officer" shall be construed accordingly (j) :

The expression "the divisions of Lincolnshire" means the parts of Holland, the parts of Kesteven, and the parts of Lindsey :

The expression "County and Borough Police Act, 1856," means the Act of the session of the nineteenth and twentieth years of the reign of her present Majesty, chapter sixty-nine, intituled "An Act to render more effectual the police in counties and boroughs in England and Wales," and the expression "County and Borough Police Acts" means the County and Borough Police Act, 1856, and the Acts therein recited :

The expression "[county] road," when used in relation to the district of any highway or road authority, means so much of the [county] road as is situate within the district of such authority (k). Section 100.

In relation to the election of county councillors, the day of nomination shall be deemed to be the day on which the names of the persons nominated are fixed on the town hall or other conspicuous place.

No attempt has been made to eliminate definitions which may not be strictly applicable for the purposes of this Work. Italicised portions have been repealed by either the S. L. R. A., 1908 (18 Halsbury's Statutes 1175), the Costs in Criminal Cases Act, 1908 (4 Halsbury's Statutes 739), or the L. G. A., 1933, *ante*, p. 735.

(a) Definition repealed by the L. G. A., 1933, *ante*, p. 735.

(b) As to the appointed day, see s. 109, *infra*.

(c) Guardians have been abolished and their functions in the main transferred to county and county borough councils by the L. G. A., 1929, Vol. V., *post*.

(d) Poor Law areas are now co-extensive with counties and county boroughs (see L. G. A., 1929).

(e) See definitions of "district council" and "county district" in the L. G. A., 1894, s. 21 (3), *post*, p. 4904.

(f) It will be remembered that quarter sessions boroughs are now urban sanitary areas within the meaning of the Highways and Locomotives (Amendment) Act, 1878. See ss. 35 (3) and 38 (3), *ante*, pp. 4747, 4751.

(g) Highway Boards ceased to exist in 1894 (L. G. A., 1894, s. 25, *post*, p. 4905).

(h) See the cases collected in the note to L. G. A., 1933, s. 151, *ante*, p. 962. It was held that this definition did not extend to a case in which it was sought to make a local authority responsible for a negligent act of their predecessors. See *Nash v. Rochford R. C.*, [1917] 1 K. B. 384; 81 J. P. 57; 26 Digest 405, 1272.

(j) In *Legg v. Stoke Newington Vestry* (1895), 59 J. P. 696; 38 Digest 139, 1035, in actions for compensation for pecuniary loss by abolition of office under a local Act, DAV, J., held that a sanitary inspector, clerk to the sanitary committee, messenger, hall porter, and office boy, appointed by a vestry, were "officers" within the meaning of the provisions for compensation and not merely servants. See also *R. v. Bridgewater Corporation* (1837), 6 Ad. & El. 339; 1 J. P. 213; 33 Digest 379, 890; *R. v. Armagh U. D. C.*, [1901] 2 I. R. 28, and other cases cited in the note to the L. G. A., 1894, s. 81 (7), *post*, p. 4923.

(k) The provisions of the Act as to county roads, so far as they are within the scope of this Work, are contained in ss. 11, 34, 35 and 38, *ante*, pp. 4726, 4744, 4746, 4750. The word "county" is substituted for "main" by reason of the L. G. A., 1929, s. 29 (1), Vol. V., *post*.

101. This Act shall not extend to Scotland or Ireland.

Extent
of Act.

102. This Act may be cited as the Local Government Act, 1888.

Short title.

PART VI.

TRANSITORY PROVISIONS.

[Ss. 103—108, repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).]

Appointed Day.

109.—(1) Subject as in this Act mentioned, the appointed day for the purposes of this Act shall in each county be the first day of April next after the passing thereof, or such other day, earlier or later, as the Local Government Board (but after the election of county councillors for such county on the application of the provisional council or county

Appointed
day.

Section 109. council) may appoint, either generally or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections or for different counties.

(2) [*Temporary. Repealed S. L. R. A., 1908 (18 Halsbury's Statutes 1175).*]

[*Ss. 110—114 were repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175). S. 115 relates only to London. S. 116 repealed by the S. L. R. A., 1908 (op. cit.). S. 117 relates only to London. Ss. 118—120 were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275. S. 121 was repealed by the S. L. R. A., 1908.*]

Savings.

[*S. 122 was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

Saving for
existing
byelaws.

123. All such byelaws, orders, and regulations of the Privy Council Secretary of State, Board of Trade, Local Government Board, or Government department, or of any quarter sessions, council of a borough, the Metropolitan Board of Works, or other authority, whose powers and duties are transferred by or in pursuance of this Act to any county council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if they had been made by such council, subject, nevertheless, to revocation or alteration by such council in the manner in which byelaws can be made by such council, and also to any exceptions or modifications which may be made at the time of the transfer.

[*Ss. 124—126 repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., ante, pp. 1194, 1275.*]

SCHEDULES.

Sect. 20.

FIRST SCHEDULE.

LOCAL TAXATION LICENCES.

* * * * *

SECOND SCHEDULE.

Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. III., *ante*, pp. 1194, 1275.

Sects. 31, 34, 35, 36, 69.

THIRD SCHEDULE.

COUNTY BOROUGHs.

The list of county boroughs included in this Schedule is the same as that in the L. G. A., 1933, Sched. I., Pt. II., *ante*, p. 1197, except that it does not include Barnsley, Blackpool, Bournemouth, Burton-upon-Trent, Carlisle, Darlington, Dewsbury, Doncaster, Eastbourne, East Ham, Grimsby, Merthyr Tydfil, Newport, Oxford, Rotherham, Smethwick, Southend-on-Sea, Southport, Stoke-on-Trent, Tynemouth, Wakefield, Wallasey and West Hartlepool, all of which have become county boroughs since 1888; and that it does include Devonport and Hanley which have ceased to be separate county boroughs since that date.

THE MORTMAIN AND CHARITABLE USES ACT, 1888.

(51 & 52 VICT. c. 42) (a).

An Act to consolidate and amend the Law relating to Mortmain and to the disposition of Land for Charitable Uses. [13th August, 1888.]

(a) The P. H. A., 1875, s. 7 (13 Halsbury's Statutes 629), provided that local boards and improvement commissioners might hold lands without licence in mortmain for the purposes of that Act. And by s. 31 (2) of the L. G. A., 1933, *ante*, p. 766, and by *ibid.*, s. 32 (2), *ante*, p. 766, urban and rural district councils respectively have power to hold land for the purposes of their constitution without licence in mortmain. By s. 7 of the Commons Act, 1899, *post*, p. 4983, any district council may acquire and hold property in a common regulated by scheme under that Act, without such licence. By s. 150 of the Housing Act, 1936, *ante*, p. 1745, a local authority may accept a donation of land or other property for any of the purposes of the Act without the necessity of enrolling any assurance as to such property under this Act. As to the powers of the corporation of a borough, see the L. G. A., 1933, ss. 17 (3), 171, 172, *ante*, pp. 752, 1000, and *Truro Corporation v. Rowe*, [1902] 2 K. B. 709; 66 J. P. 821; 13 Digest 371, 1027. The powers of a sanitary authority to hold lands for purposes other than those mentioned in these statutes depend upon this statute as amended by the Working Classes Dwellings Act, 1890, the Mortmain and Charitable Uses Act, 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892, *post*, pp. 4800, 4834, 4836. A "trust corporation" which includes "in relation to charitable . . . and public trusts . . . any local or public authority" prescribed by the Lord Chancellor (Law of Property (Amendment) Act, 1926, s. 3 in Vol. V. and 15 Halsbury's Statutes 546) may now hold land as a sole trustee under ss. 30 and 94 of the Settled Land Act, 1925 (17 Halsbury's Statutes 869, 929), and may act as a personal representative under s. 14 of the Administration of Estates Act, 1925.

PART I.

MORTMAIN.

1.—(1) Land shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain, otherwise than under the authority of a licence from her Majesty the Queen, or of a statute for the time being in force (a), and if any land is so assured otherwise than as aforesaid the land shall be forfeited to her Majesty from the date of the assurance, and her Majesty may enter on and hold the land accordingly:

Forfeiture on unlawful assurance or acquisition in mortmain.

(2) Provided as follows:

- (i) If the land is held directly of a mesne lord under her Majesty, that mesne lord may enter on and hold the land at any time within twelve months from the date of the assurance:
- (ii) If the land is held of more than one mesne lord in gradation under her Majesty, the superior of those mesne lords may enter on and hold the land at any time within six months after the time at which the right of the inferior lord to enter on the land expires:
- (iii) If a mesne lord is at the time when his right of entry accrues under this Act a lunatic or otherwise under incapacity, his right of entry may be exercised by his guardian or the committee of his estate, or by such person as her Majesty's High Court of Justice may appoint in that behalf:
- (iv) If the right of entry under this Act is exercised by or on behalf of a mesne lord, the land shall be forfeited to that lord from the date of the assurance instead of to her Majesty.

(a) See note (a), *supra*.

2. It shall be lawful for her Majesty the Queen, if and when and in such form as she thinks fit, to grant to any person or corporation a licence to assure in mortmain land in perpetuity or otherwise, and to grant to any

Power to her Majesty to grant licences in mortmain.

Section 2. corporation a licence to acquire land in mortmain and to hold the land in perpetuity or otherwise.

Saving for rents and services. 3. No entry or holding by or forfeiture to her Majesty under this Part of this Act, shall merge or extinguish, or otherwise affect, any rent or service which may be due in respect of any land to her Majesty or any other lord thereof.

PART II.

CHARITABLE USES.

Conditions under which assurances may be made to charitable uses. 4.—(1) Subject to the savings and exceptions contained in this Act, every assurance of land, to or for the benefit of any charitable uses and every assurance of personal estate to be laid out in the purchase of land, to or for the benefit of any charitable uses, shall be made in accordance with the requirements of this Act, and unless so made shall be void (a).

(2) The assurance must be made to take effect in possession for the charitable uses to or for the benefit of which it is made immediately from the making thereof.

(3) The assurance must, except as provided by this section, be without any power of revocation, reservation, condition, or provision for the benefit of the assurator or of any person claiming under him.

(4) Provided that the assurance, or any instrument forming part of the same transaction, may contain all or any of the following provisions, so, however, that they reserve the same benefits to persons claiming under the assurator as to the assurator himself; namely,

(i) The grant or reservation of a peppercorn or other nominal rent;

(ii) The grant or reservation of mines or minerals;

(iii) The grant or reservation of any easement;

(iv) Covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;

(v) A right of entry on non-payment of any such rent or on breach of any such covenant or provision;

(vi) Any stipulations of the like nature for the benefit of the assurator or of any person claiming under him.

(5) If the assurance is made in good faith on a sale for full and valuable consideration, that consideration may consist wholly or partly of a rent, rent-charge, or other annual payment reserved or made payable to the vendor, or any other person, with or without a right of re-entry for non-payment thereof.

(6) *If the assurance is of land, not being land of copyhold or customary tenure, or is of personal estate, not being stock in the public funds, it must be made by deed executed in the presence of at least two witnesses (b).*

(7) If the assurance is of land, or of personal estate, not being stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made at least twelve months before the death of the assurator, including in those twelve months the day of the making of the assurance and of the death.

(8) If the assurance is of stock in the public funds, then, unless it is made in good faith for full and valuable consideration, it must be made by transfer thereof in the public books kept for the transfer of stock at least six months before the death of the assurator, including in those six months the days of the transfer and of the death.

(9) *If the assurance is of land, or of personal estate other than stock in the*

public funds, it must, within six months after the execution thereof, be enrolled in the central office of the Supreme Court of Judicature, unless in the case of an assurance of land to or for the benefit of charitable uses those uses are declared by a separate instrument, in which case that separate instrument must be so enrolled within six months after the making of the assurance of the land (c).

Section 4.

(a) A domiciled Victorian, who died in June, 1891, bequeathed £10,000 to the mayor and corporation of the city of Canterbury, in England, for the purpose of their buying a suitable piece of land and erecting thereon a free library. Under the law of Victoria the corporation were able lawfully to expend the money as directed by the testator:—*Held*, that the English Mortmain Act, 1888, only applied in so far as that the assurance of the land must be in accordance with the provisions of the Act, and that the bequest was valid (*Canterbury Corporation v. Wyburn*, [1895] A. C. 89; 8 Digest 287, 640).

(b) This sub-section is repealed so far as it relates to assurances executed after January 1st, 1926, by s. 119, and Sched. V. of the Settled Land Act, 1925 (17 Halsbury's Statutes 955, 974). Such attestation is no longer necessary. See note (c), *infra*.

(c) This provision is repealed so far as it relates to assurances executed after January 1st, 1926, by s. 119 and Sched. V. of the Settled Land Act, 1925. See now s. 29 (4), *ibid.* (*op. cit.* 869), which provides as follows:—

“(4) Every assurance of land or of personal estate, within the meaning of section four of the Mortmain and Charitable Uses Act, 1888, or if the charitable uses are declared by a separate instrument, then that instrument, shall, in place of the requirements respecting attestation and enrolment prescribed by sub-sections (6) and (9) of that section, be sent to the offices of the Charity Commissioners within six months after the execution thereof or within such extended period as the said Commissioners may, either before or after the expiration of the six months, in any particular case allow, for the purpose of being recorded in the books of the said Commissioners.

“Where the original cannot be produced, an attested or office copy may be sent instead of the original.

“This sub-section does not apply to registered dispositions of registered land, or to assurances or instruments required by section one hundred and seventeen of the Education Act, 1921, to be sent to the Board of Education, and only applies to instruments executed after the commencement of this Act.”

For a case where a claim was made without success for a declaration that an assurance of land need not be enrolled because of a private Act, see *In re Verrall, National Trust for Places of Historic Interest or National Beauty v. Att.-Gen.*, [1916] 1 Ch. 100; 80 J. P. 89; 8 Digest 260, 217.

5.—(1) Where an instrument, the enrolment whereof is required under this part of this Act for the validation of an assurance, is not duly enrolled within the requisite time, her Majesty's High Court of Justice, or the officer having control over the enrolment of deeds in the central office, may, on application in such manner and on payment of such fee as may be prescribed by rules of the Supreme Court, and on being satisfied that the omission to enrol the instrument in proper time has arisen from ignorance or inadvertence, or through the destruction or loss of the instrument by time or accident, and that the assurance was of a nature to be validated under this section, order or cause the instrument to be enrolled.

Power to remedy omission to enrol within requisite time.

(2) Thereupon, if the assurance to be validated was made in good faith and for full and valuable consideration, and was made to take effect in possession immediately from the making thereof without any power of revocation, reservation, condition, or provision, except such as is authorised by this Act, and if at the time of the application possession or enjoyment was held under the assurance, then enrolment in pursuance of this section shall have the same effect as if it had been made within the requisite time.

(3) Provided that if at the time of the application any proceeding for setting aside the assurance, or for asserting any right founded on the invalidity of the assurance, is pending, or any decree or judgment founded on such invalidity has been then obtained, the enrolment under this section shall not give any validity to the assurance.

(4) Where the instrument omitted to be enrolled in proper time has been destroyed or lost by time or accident and the trusts thereof sufficiently appear by a copy or abstract thereof or some subsequent instrument, such copy, abstract, or subsequent

Section 5. *instrument may be enrolled under this section in like manner and with the like effect as if it were the instrument so destroyed or lost.*

(5) *An application under this section may be made by any trustee, governor, director, or manager of, or other person entitled to act in the management of or otherwise interested in, any charity or charitable trust intended to be benefited by the uses declared by the instrument to be enrolled (a).*

(a) See note (c) to s. 4, *ante*, p. 4773.

PART III.

EXEMPTIONS.

Assurances for a public park, elementary school, or public museum.

6.—(1) Parts One and Two of this Act shall not apply (a) to an assurance by deed of land of any quantity or to an assurance by will of land of the quantity hereinafter mentioned for the purposes only of a public park, a schoolhouse for an elementary school (b), a public museum, or an assurance by will of personal estate to be applied in or towards the purchase of land for all or any of the same purposes only.

(2) Provided that a will containing such an assurance, and a deed containing such an assurance and made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assurator, or be a reproduction in substance of a devise made in a previous will in force at the time of such reproduction, and which was executed not less than twelve months before the death of the assurator, and must be enrolled in the books of the Charity Commissioners within six months after the death of the testator, or in case of a deed the execution of the deed.

(3) The quantity of land which may be assured by will under this section shall be any quantity not exceeding twenty acres for any one public park, and not exceeding two acres for any one public museum, and not exceeding one acre for any one schoolhouse.

(4) In this section,

- (i) "Public Park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public ;
- (ii) "Elementary school" means a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction from each scholar exceed ninepence a week ;
- (iii) "Schoolhouse" includes the teacher's dwelling-house, the playground (if any), and the offices and premises belonging to or required for a school ;
- (iv) "Public museum" includes buildings used or to be used for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical or philosophical inventions, instruments, models, or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories, and other offices and premises used or to be used in connection therewith.

(a) It is provided by the Working Classes Dwellings Act, 1890, *post*, p. 4800, that Parts I. and II. of this Act shall not apply to gifts of land for dwellings for the working classes.

It is further provided by the Mortmain and Charitable Uses Act Amendment Act, 1892, *post*, p. 4836, that the above section, except as therein mentioned, shall apply to any assurance by deed of land to any local authority, for any purposes for which such authority is empowered by any Act of Parliament to acquire land. See s. 164 of the P. H. A., 1875, *ante*, p. 4451. By s. 150 of the Housing Act, 1936, and Sched. II., para. 16 of the Town

and Country Planning Act, 1932, *ante*, pp. 1745, 1993, a local authority may accept donations of land or money or other property for any purpose of those Acts, and assurances with respect thereto need not be enrolled under this Act.

As to the enforcement of secret trusts for the benefit of the public, see *In re Pitt Rivers*, *Scott v. Pitt Rivers*, [1902] 1 Ch. 403; 66 J. P. 275; 8 Digest 290, 673.

(b) Section 117 of the Education Act, 1921 (7 Halsbury's Statutes 193), exempts assurances (as defined by s. 10 of the Mortmain Act in the text) of land or personal estate to be laid out in the purchase of land for educational purposes from any restrictions of the law relating to mortmain and charitable uses, and enacts that the Mortmain and Charitable Uses Acts, 1888 and 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892, shall not apply with respect to any such assurance.

Note to
Section 6.

7. Part Two of this Act shall not apply to the following assurances :

- (i) An assurance of land, or personal estate to be laid out in the purchase of land, to or in trust for any of the Universities of Oxford, Cambridge, London, Durham, and the Victoria University, or any of the colleges or houses of learning within any of those universities, or to or in trust for any of the colleges of Eton, Winchester, and Westminster, for the better support and maintenance of the scholars only upon the foundations of those last-mentioned colleges, or to or in trust for the warden, council, and scholars of Keble College (a) :

Assurances
for certain
universities,
colleges, and
societies.

- (ii) An assurance, otherwise than by will, to trustees on behalf of any society or body of persons associated together for religious purposes or for the promotion of education, art, literature, science, or other like purposes of land not exceeding two acres for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected so that the assurance be made in good faith for full and valuable consideration :

Provided that the trustees of the instrument containing any assurance to which this section applies or declaring the trusts thereof, may, if they think fit, at any time cause the instrument to be enrolled in the central office of the Supreme Court of Judicature.

(a) See also the Universities and College Estates Act, 1925, Vol. V., *post*.

8. Where by any statute now in force any provision of the enactments hereby repealed is excluded either wholly or partially from application, or is applied with modification, in every such case the corresponding provision of this Act shall be excluded or applied in like extent and manner.

Substitution of
provisions
of Act for
corresponding
repealed
enactments.

PART IV.

SUPPLEMENTAL.

9. Any assurance of land which is by this Act required to be made by deed may be made by a registered disposition under the provisions of the Land Transfer Act, 1875, or of any Act amending the same, and any assurance so made shall be exempt from the provisions of this Act as to execution in the presence of witnesses, and as to enrolment in the central office of the Supreme Court (a).

Adaptation of
law to system
of land
registration.
38 & 39 Vict.
c. 87.

(a) See note (c) to s. 4, *ante*, p. 4773.

10. In this Act, unless the context otherwise requires,—

- (i) "Assurance" includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, incumbrance, devise, bequest, and every other assurance by deed, will, or other

Definitions.

Section 10.

instrument; and "assure" and "assuror" have meanings corresponding with assurance.

(ii) "Will" includes codicil (a).

(iv) "Full and valuable consideration" includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent-charge, or other annual payment in perpetuity, or for any term of years or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved as aforesaid.

(a) Sub-s. (iii) was repealed by the Mortmain and Charitable Uses Act, 1891, *post*, p. 4834. It contained the definition of "land." See now s. 3 of that Act, *post*, p. 4834.

Extent of Act.

11. This Act shall not extend to Scotland or Ireland.

Savings for existing customs, etc.

12. Nothing in this Act shall affect the operation or validity of any charter, licence, or custom in force at the passing of this Act enabling land to be assured or held in mortmain.

Repeal.

13(a).—(1) *The Acts specified in the Schedule to this Act are hereby repealed from and after the passing of this Act, to the extent specified in the third column of that Schedule:*

Provided that this repeal shall not affect—

- (a) Any enactment not hereby repealed referring to any enactment hereby repealed, except that in lieu of that reference the unrepealed enactment shall be construed as if it referred to the corresponding provisions of this Act; or
- (b) *The past operation of any enactment hereby repealed, or any instrument or thing executed, done, or suffered before the passing of this Act; or*
- (c) *Any right, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or*
- (d) *Any action, proceeding, or thing pending or uncompleted at the time of the passing of this Act.*

(2) Whereas by the preamble to the Act of the forty-third year of Elizabeth chapter four (being one of the enactments hereby repealed), it is recited as follows:

"Whereas landes tenementes rentes annuities p'fittes hereditamentes, goodes chattels money and stockes of money, have bene heretofore given limitedt appointed and assigned, as well by the Queenes moste excellent Majestie and her moste noble progenitors, as by sondrie other well disposed p'sons, some for releife of aged impotent and poore people, some for maintenance of sicke and maymed souldiers and marriners, schooles of learninge, free schooles and schollers in univ'sities, some for repaire of bridges portes havens causwaies, churches sea bankes and highewaies, some for educacon and p'fermente of orphans, some for or towards reliefe stocke or maintenance for howses of correcon, some for mariages of poore maides, some for supportacon ayde and helpe of younge tradesmen, handiecraftesmen and p'sons decayed, and others for releife or redemption of prisoners or captives, and for aide or ease of any poore inhabitantes conc'ninge paymente of fifteenes, settinge out of souldiers and other taxes; whiche landes tenements rents annuities p'fitts hereditaments goodes chattels money and stockes of money nev'theles have not byn employed accordinge to the charitable intente of the givers and founders thereof, by reason of fraudes breaches of truste and negligence in those that shoulde pay delwyer and employ the same:" and whereas in divers enactments and documents reference

is made to charities within the meaning, purview, and interpretation of Section 13. the said Act :

Be it therefore enacted that references to such charities shall be construed as references to charities within the meaning, purview, and interpretation of the said preamble.

(a) The italicised words in s. 13 were repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

14. This Act may be cited as the Mortmain and Charitable Uses Act, Short title. 1888.

THE PUBLIC HEALTH (BUILDINGS IN STREETS) ACT, 1888.

(51 & 52 VICT. c. 52.)

An Act to amend the Public Health Acts in relation to Buildings in Streets. [24th December 1888.]

Reference should also be made to the Roads Improvement Act, 1925, s. 5, Vol. V., *post*, which enables highway authorities to prescribe building lines, and to the P. H. A., 1925, ss. 33 and 34, Vol. V., *post*, as to improvement lines, and to ss. 30, 31 and 32, *ibid.*, Vol. V., *post*, which give further powers respecting the development of land adjoining streets and other highways. Control of development may also be obtained by a Town Planning Scheme made under one of the Town Planning Acts.

Whereas the provisions of the Public Health Act, 1875, with respect to bringing forward houses or buildings in streets are defective, and it is expedient to make further provisions in relation thereto :

1. This Act may be cited as the Public Health (Buildings in Streets) Act, 1888, and this Act and the Public Health Act, 1875, and the Public Health (Water) Act, 1878, and the Public Health (Interments) Act, 1879, and the Public Health (Fruit Pickers' Lodgings) Act, 1882, and the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and the Public Health (Confirmation of Byelaws) Act, 1884, and the Public Health (Officers) Act, 1884, and the Public Health (Ships, etc.) Act, 1885, and the Public Health (Members and Officers) Act, 1885, may be cited together as the Public Health Acts, and this Act shall be construed as one with the Public Health Act, 1875. Short titles
and
construction.

The Act is simply a single enactment to replace s. 156 of the P. H. A., 1875, *ante*, p. 4432, which, as the preamble states, had been found to be defective. Most of the Acts cited have been repealed and replaced, but it is still their provisions so far as unrepealed which are to be construed with this Act. The effect of the provision that the Act is to be construed as one with the P. H. A., 1875, would appear to be to keep alive the exemption contained in s. 157 of the last-mentioned Act, *ante*, p. 4432, in favour of "buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament."

If a rural district council desire to have the powers of this Act they must apply to the Minister of Health for an order under s. 276 of the Act of 1875, *ante*, p. 4502, but it appears that the Minister has shown reluctance to extend the sphere of operation of the Act, by reason of the difficulty in applying it which is illustrated by the cases noted under s. 3, *post*, pp. 4778—83, and of complications introduced by later legislation : *cf.* the general note, *ante*, p. 2001.

Section 2.
Interpreta-
tion.

2. In this Act, unless the context otherwise requires, words and expressions to which meanings are assigned by the Public Health Act, 1875, have in this Act the same respective meanings.

The effect of this provision is to give words used in this Act the meanings assigned to them by the P. H. A., 1875, s. 4, *ante*, p. 4381. See, however, note (c) to the next section.

Buildings
not to be
brought
forward.

3. Section one hundred and fifty-six of the Public Health Act, 1875, is, save as hereinafter mentioned, hereby repealed (a), and in lieu thereof it is hereby enacted that it shall not be lawful in any urban district, without the written consent of the urban authority, to erect or bring forward any house or building (b) in any street (c), or any part of such house or building, beyond the front main wall of the house or building on either side thereof in the same street (d), nor to build any addition to any house or building beyond the front main wall of the house or building on either side of the same.

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority (e).

Provided that the repeal by this Act enacted shall not affect anything duly done or suffered, or any right or liability acquired, accrued, or incurred, or any security given under the section hereby repealed, or any penalty, forfeiture, or punishment incurred in respect of any offence committed against such section, or any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.

(a) Section 156 of the P. H. A., 1875, provided as follows: It shall not be lawful in any urban district, without the written consent of the urban authority, to bring forward any house or building forming part of any street or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same. Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority. It was held, with reference to this section, that the expression "house or building" did not include new buildings in course of erection upon land never before built upon (*Williams v. Wallasey L. B.* (1886), 16 Q. B. D. 718; 50 J. P. 582; 26 Digest 560, 2545); and in consequence of this decision the enactment in the text was passed. It may be taken that this enactment has no application to cases coming within s. 155 of the P. H. A., 1875, *ante*, p. 4428 (see *Lord Auckland v. Westminster District Board of Works* (1872), 7 Ch. App. 597; 26 Digest 501, 2087); but, *semble*, that section does not apply where after buildings have been taken down the site has been so long left vacant that it appears that the intention of rebuilding has been abandoned (*Worley v. St. Mary Abbots, Kensington, Vestry*, [1892] 2 Ch. 404; 26 Digest 502, 2095).

Consent.

(b) A local authority could not justify making a charge for giving their consent (*Southwark Corporation v. Partington Advertising Co.* (1905), 69 J. P. 183; 3 L. G. R. 505; 38 Digest 178, 203; *Liverpool Corporation v. Arthur Maiden, Ltd.*, [1938] 4 All E. R. 200; Digest Supp. In *R. v. Newcastle-on-Tyne Corporation* (1912), 76 J. P. N. 176, 251, mandamus was issued to a local authority to consider plans for the bringing forward of a building beyond the front main wall of the building on either side thereof without imposing a condition that a strip of land should be given up for widening the street.

It should be observed that mere acquiescence does not amount to a written consent

Note to
Section 3.

for purposes of this section. See *per* JESSEL, M.R., in *Kerr v. Corporation of Preston* (1876), 6 Ch. D. at p. 468; 26 Digest 559, 2541. The written consent need not be under seal. Where plans showing that the building line was infringed were passed, and stamped as approved, by a committee whose proceedings were subsequently ratified by the council, it was held that this was a sufficient consent for the purposes of the section (*Mullis v. Hubbard*, [1903] 2 Ch. 431; 67 J. P. 281; 26 Digest 559, 2542). And if projections beyond the line are shown on the plans approved by the council, the approval may be considered a written consent within the section, although the attention of the council was not specifically called to the projections (*Merrett v. Charlton Kings U. D. C.* (1903), 67 J. P. 419; 26 Digest 559, 2543). On December 10th, 1923, a plan was submitted and passed by a committee of the council whose attention was not specifically called to the fact that the building would infringe this Act, and the building was commenced on December 16th, on the faith of that approval. On May 12th, 1924, when the building was in course of erection the attention of the council was drawn to the fact that the building contravened this section and a written consent was given. In subsequent proceedings by the Att.-Gen. for a mandatory injunction to pull down the building because it had been "commenced" without the consent of the council it was held that there was a sufficient written consent within the section (*Att.-Gen. v. Denby*, [1925] 1 Ch. 596; 89 J. P. 145; 26 Digest 560, 2544). *Seem*, the last three cases are no longer good law, so far as concerns this point, if sub-s. (2) (ii) of s. 64 of the P. H. A., 1936, *ante*, p. 224, is complied with by the local authority which passes building plans (*quære* if by oversight plans are passed without compliance with that subsection): *cf.* note (h), *ante*, p. 255. The fact that an official of the council has led a builder to think that his building will be consented to will not avail the builder if the council disregard the advice of their official and refuse consent: see *Att.-Gen. v. Wimbledon House Estate Co.*, *post*, p. 4783.

By the P. H. A., 1875, s. 4, *ante*, p. 4331, which must be read into this Act (see "House or s. 2, *ante*, p. 4778), the expression "house" includes schools, also factories and other buildings in which persons are employed. There is no definition of the word "building." See decisions as to what is a house or a building, *ante*, p. 689. Whether a structure is a building within the meaning of the present section or not is a question of fact to be determined by the justices, provided the thing erected is of such a nature that it is capable of being a building. A wooden structure used for advertising purposes was 9 feet 6 inches long, 3 feet wide, and 7 feet high; was roofed over, and had a glass front, and a door by which to enter; and was fastened to the ground by four posts, sunk to the depth of 9 to 12 inches; it was held to be of such a nature that it was capable of being a building within the meaning of this section (*Brown v. Leicester (Mayor, etc. of)* (1892), 57 J. P. 70; 62 L. J. M. C. 22; 26 Digest 560, 2547); see also *R. v. Gregory* on p. 689, *ante*. As to hoardings, see *Paddington Corporation v. Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41, referred to at p. 690, *ante*; in the judgment of BUCKLEY, J., in this case the previous authorities are cited and discussed (see *Boyce v. Paddington Borough Council*, [1903] 1 Ch. 109; 67 J. P. 23; 28 Digest 495, 2581).

The owner of a house, which was situate in a street in an urban district, and had a small garden in front, erected, without consent, in front of the door a porch of wood and glass and roofed with felt, projecting 6 feet 6 inches beyond the front main wall of the house. The porch was not attached to the house, and stood on wheels. The owner was summoned under this section for building an "addition to the house" without consent, etc., but the magistrates dismissed the summons on the ground that the porch did not constitute an addition to the house. It was held, that the court could not say that in so deciding the magistrates had gone wrong in law, and that therefore their decision must stand (*Sunderland Corporation v. Charlton* (1912), 77 J. P. 127; 11 L. G. R. 484; 26 Digest 562, 2566).

There have been many cases as to whether particular erections were "buildings or structures" within the meaning of the London Building Act, 1894, s. 22. A glass and iron portico or shelter which projected beyond the general line of the street, and was dovetailed into the main structure of the building, was held to be such a building or structure (*Coburg Hotel Co. v. London C. C.* (1899), 63 J. P. 805; 81 L. T. 450; 26 Digest 503, 2103). An advertising company affixed upon the front wall of a building advertisement cases, constructed of iron and supported by iron supports pinned through the wall. The outer sides were covered with wooden

**Note to
Section 3.**

frames carrying canvas lined with advertisements, and provision was made for illuminating the interiors with electric light. The cases, which varied in width and height, projected ten inches in front of the front wall of the building beyond the building line, but less than the existing cornice over the shop, which was two feet beyond the building line: it was held (*WILLS, J., dissentiente*), that the cases were not structures within the meaning of s. 22, *supra* (*London C. C. v. Illuminated Advertisements Co.*, [1904] 2 K. B. 886; 68 J. P. 445; 26 Digest 503, 2106). The last-mentioned case was followed where the erection complained of was a shelter hung from the front wall of a building by two stay rods, and secured to the wall at the bottom by six bolts. The shelter consisted of an iron framework filled in on the front and sides with leaded glass, and covered on the top with zinc. There were letters on the glass made visible by night by lights arranged within the shelter (*London C. C. v. Scheuzik*, [1905] 2 K. B. 695; 69 J. P. 409; 26 Digest 503, 2104); and it was again followed where a firm of milliners erected on the steps and landing leading to the front door in the front main wall of their premises a show case which took the place of a shop front and projected beyond the general line of buildings. The houses in this part of the street had bay windows in front of the general line of buildings and the show case was slightly in front of the bays (*London C. C. v. Hancock and James*, [1907] 2 K. B. 45; 71 J. P. 268; 26 Digest 502, 2099). See also *Tunmer v. Partington Advertising Co.* (1904), 68 J. P. 318; 26 Digest 504, 2109; and see *Hull v. London C. C.*, [1901] 1 K. B. 580; 65 J. P. 309; 26 Digest 503, 2105, to the effect, that advertisement cases are not "projections" within the meaning of the London Building Act, 1894, s. 73 (8) (11 Halsbury's Statutes 1162). As to the section of the street which may be taken into account in defining the general line of buildings in a block forming part of the street, see *L. C. C. v. Galsworthy*, [1918] A. C. 851; 82 J. P. 297; 26 Digest 506, 2121.

It was decided that a petrol pump consisting of a standard with the usual appurtenances was an "erection" and also an "obstruction" within the meaning of those words as used in a town planning scheme (*Mackenzie v. Abbott* (1926), 24 L. G. R. 444; 38 Digest 216, 506); it should, however, be observed that the section in the text refers to "house or building."

"Street."

(c) The word "street," as defined by the P. H. A., 1875, s. 4, *ante*, p. 4336, includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. This definition is incorporated by s. 2, *ante*, p. 4778, and consequently the Act might be construed as applying to any road, public or private, whether it has acquired the character of a street in the ordinary acceptance of the term or not. Indeed, it was the very object of the Act to enable an urban authority to exercise some control over the line of buildings in new streets. It has, however, apparently been decided that the question whether a road is a street within the meaning of the section is one of fact and also of degree as it may be a street at one end, though at the other still a country road (*Att.-Gen. v. Siddall* (1898), Times, June 24th); and in the repealed s. 156, *ante*, p. 4432, the word *street* had its ordinary signification, not the wider meaning (see *R. v. Fullford* (1864), 28 J. P. 357; 33 L. J. M. C. 122; 26 Digest 275, 130). In *Att.-Gen. v. Laird*, [1925] 1 Ch. 318; 89 J. P. 95; 26 Digest 272, 112, it was held that in order to be a street within this section there must be a succession of houses and buildings at least on one side of it with some degree of continuity and proximity such as would enable the court as a question of fact to hold that what was originally a mere highway had become a street in the ordinary acceptance of the term. The Act is defective to this extent, that there will be no control over the earliest buildings in the street, and these may really fix the line for the rest of the street. See now, however, the power to prescribe building lines given by s. 5 of the Roads Improvement Act, 1925, Vol. V., *post*, the powers in respect to the development of land adjoining streets and other highways under ss. 30—32, P. H. A., 1925, Vol. V., *post*, and the extensive powers of regulating development by a scheme under the Town and Country Planning Act, 1932, *ante*, p. 1879. The other provisions are set out, *post*. In *R. v. Middlesbrough Corporation* (1890), Times, July 7th, Lord COLERIDGE, C.J., and WILLS, J., granted a *mandamus* to the corporation to approve plans for a house to be erected in a new street where there were no other houses on either side thereof in the same street except one at a distance of 800 feet. See, however, as to the granting of a *mandamus*, *R. v. Eastbourne Corporation* and *R. v. Chiswick U. D. C.*, *Ex parte Bricknell*, *post*, p. 4782, and note (a), *ante*, p. 226.

**Note to
Section 3.**

A house at the corner of two streets may be in both streets for the purposes of this enactment (*Gilbart v. Wandsworth District Board of Works* (1888), 53 J. P. 229; 60 L. T. 149; 26 Digest 506, 2117; see also *London C. C. v. Laurance*, [1893] 2 Q. B. 228; 57 J. P. 617; 26 Digest 514, 2184).

(d) The respondent began to erect the front main wall of a new house in a street. At that time B. had raised the front main wall of a new house, which he was erecting on the same side of the street to the height of five inches above the ground. It did not appear to what extent the other walls of B.'s house had been built, or that they were connected with the front main wall. There was a distance of about 300 or 400 feet between the two houses, and there was no other house between them. The front main wall of the respondent's house was six feet nearer the roadway than that of B.'s house. It was held that the respondent had not committed an offence against this enactment (*Ravensthorpe L. B. v. Hinchcliffe* (1889), 24 Q. B. D. 168; 54 J. P. 421; 26 Digest 561, 2550). The grounds of this decision were: (1) that there was not, when the respondent began to build, any front main wall of a house or building on B.'s land; and (2) that the words "house on either side thereof" mean "a house within some near distance, within some degree of proximity, and not one standing some considerable distance away": *per* FRY, L.J. See, as to the second point, *Barlow v. St. Mary Abbots, Kensington, Vestry* (1886), 11 App. Cas. 257; 50 J. P. 691; 26 Digest 505, 2116. And see *R. v. Middlesbrough Corporation* (1890), Times, July 17; *Ellis and Ruislip-Northwood U. C., In re*, [1920] 1 K. B. 343; 83 J. P. 273; 38 Digest 218, 524. These cases were followed in *Att.-Gen. v. Laird*, [1925] 1 Ch. 318; 89 J. P. 95; 26 Digest 272, 112, in which the court held that a building 700 feet distant was not a house on either side. In that case POLLOCK, M.R., at p. 333, said, "If you find that the house relied upon is so far distant that no person in ordinary parlance would say that it was the next house in the same street, you cannot hold that the section has been transgressed. There must be some reasonable measure of contiguity and proximity in order to find that there is a house on either side to which the house in question must conform."

At the junction of the O. and C. roads a house was erected abutting on the footpath of C. road. The main entrance of the house was in O. road. At a distance of sixty-four feet from the back wall of the premises attached to the house in C. road was situated a row of eleven small cottages set back eight feet from C. road. The justices on an information against the owner of the house, under this Act, held that the house in question was in both C. and O. roads, that the cottages were buildings on one side of the house within the meaning of the section, and convicted the owner. It was held that it was a question of fact for the justices whether the house in question was or was not in both roads, and also whether the cottages were sufficiently near to the house to be on one side thereof within the meaning of the Act, and that the conviction must be affirmed (*Warren v. Mustard* (1891), 56 J. P. 502; 61 L. J. M. C. 18; 26 Digest 561, 2555).

In considering what is the front main wall of a house or building for the purposes of this section, and whether such house or building is on either side of, or in the same street as, a house or building in course of erection, all the circumstances of the case must be taken into consideration. The building must be looked at as a whole: its character, its position, its distance from the house or building which is being erected or brought forward in alleged contravention of the section must be considered; a particular wing or other projection must not be selected, the front of which is to be treated as the front main wall which is to give the governing line; nor are two buildings necessarily in the same street because one faces the same road or street, or a continuation of the same road or street, as the other (*Att.-Gen. v. Edwards*, [1891] 1 Ch. 194; 26 Digest 560, 2549).

As the section prohibits a house or building being brought forward beyond the front main wall of the house or building "on either side thereof," this includes a case where there are buildings only on one side of the proposed new house or building (*Leyton L. B. v. Causton* (1893), 57 J. P. 135; 26 Digest 561, 2559). The occupier of a corner house put up a shop front (in front of his own main wall) which projected beyond the front main wall of the house on one side of it, but did not project beyond the front main wall of the house on the other side, which was separated from the corner house in question by a cross street. It was held that the provisions of this section had been contravened (*Anderson v. Richards* (1906), 70 J. P. 231; 4 L. G. R. 404; 26 Digest 561, 2560). See also *London C. C. v. Laurance*, *ante*. Every case under the section must be determined with regard to its own particular circumstances. In 1856, a road was laid out on a building estate and from time to time

Front main wall of house on either side thereof in the same street.

**Note to
Section 3.**

houses were built on the east side of the road so as to form a continuous line of buildings close up to that side of the road. In 1893, T. built a house on the west side of the road, set back more than ten feet from the roadway, and in 1894 he bought a strip of land along the west side of the road to the north of his house, with the object of erecting cottages on it. The building plans showed that the cottages would be ninety feet distant from T.'s house and would be set back ten feet from the roadway, but nearer thereto than his house. The local board refused to approve of the plans for that reason. It was held that a rule *nisi* for a *mandamus* to the board to approve the plans must be made absolute, as there was no necessity that the cottages should under the circumstances be in a line with T.'s house (*R. v. Ormesby L. B.* (1894), 43 W. R. 96; 26 Digest 561, 2557). It is immaterial that adjoining property may be injured by the erection of the proposed buildings if the section is inapplicable upon the facts as to the buildings. Thus, where houses on one side of a proposed new building were set back sixty-two feet from the roadway, and it was proposed to erect a new house at a distance of twenty-one feet only from the roadway so as to project in front of the other houses, which would considerably diminish their value, the court, holding that they were not on the facts houses in the same street on the side of the proposed new house, made absolute a rule directing the local board to approve of the plans for the proposed new house (*R. v. Fulwood L. B., Ex parte Livesey* (1895), 59 J. P. 311; 72 L. T. 592; 26 Digest 561, 2563). It has now, however, been decided that a *mandamus* will not be granted as a means for trying disputed issues of fact, which can be otherwise tried, where a local authority has in good faith refused to approve on the ground that the building would contravene the provisions of this Act (*R. v. Eastbourne Corporation* (1900), 64 J. P. 724; 83 L. T. 338; 26 Digest 559, 2539; followed in *R. v. Chiswick U. D. C., Ex parte Brickell* (1908), 72 J. P. 165; 26 Digest 559, 2540). Cf. *R. v. Newcastle-on-Tyne Corporation, ante*, p. 4778. This is an application of a general rule of practice, that *mandamus* is not appropriate as a procedure by way of appeal in matters of discretion. A person who considers that a local authority's discretion under this Act has been wrongly exercised, in refusing consent to his bringing his building forward, has his remedy by appeal to Quarter Sessions: *vide* s. 7 of the P. H. A. A. Act, 1890, *post*, p. 4804, and *R. v. Esser JJ., Ex parte Barking U. D. C., ibid.*

Special Acts.

Where a railway company acting under a special Act erected a station beyond the general line of buildings in a street in the metropolis, and the station was necessary for the railway and was within the limits of deviation, it was held that the provisions of the Metropolis Management Acts as to the building line did not apply (*City and S. L. Rail. Co. v. London C. C.*, [1891] 2 Q. B. 513; 56 J. P. 6; 26 Digest 508, 2133). This decision has been followed in *London C. C. v. London School Board*, [1892] 2 Q. B. 606; 56 J. P. 791; 26 Digest 508, 2134. See also *Surrey Commercial Dock Co. v. Bermondsey Corporation*, [1904] 1 K. B. 474; 68 J. P. 155; 34 Digest 585, 70; *Stretford U. D. C. v. Manchester South Junction and Altrincham Rail. Co.* (1903), 68 J. P. 59; 1 L. G. R. 683; 26 Digest 523, 2237; *Lewis and Solome v. Charing Cross, etc. Rail. Co.*, [1906] 1 Ch. 508; 70 J. P. 221; 7 Digest 307, 286; *Met. Rail. Co. v. London C. C.*, [1913] 2 K. B. 249; 77 J. P. 190; 34 Digest 586, 73.

This Act is an Act for improving the sanitary condition of towns and populous districts within the meaning of the Waterworks Clauses Act, 1847, s. 93 (20 Halsbury's Statutes 214). Therefore, if the Act of 1847 (20 Halsbury's Statutes 186) is incorporated by the special Act of a water company, the company is liable for erecting a building in a street beyond the front main wall of the house, or building, on either side thereof in the same street (*Grand Junction Waterworks v. Hampton U. D. C.* (No. 2), (1898), 67 L. J. Q. B. 903; 79 L. T. 176; 26 Digest 560, 2548; cf. *Uckfield R. D. C. v. Crowborough Water Co.*, and *London C. C. v. Wandsworth and Putney Gas Co.*, *ante*, p. 195).

**Penalty for
contraven-
tion of
section.**

(e) Want of notice is fatal, but if a summons is dismissed for want of notice, notice may be afterwards given, and a fresh summons taken out, and the defendant convicted thereon (*Jenkins v. Merthyr Tydvil U. D. C.* (1899), 80 L. T. 600; 26 Digest 562, 2570).

For the procedure to be adopted when the justices at the hearing are equally divided, see the cases collected in the note under P. H. A., 1875, s. 251, *ante*, p. 4481.

It will be observed that the urban authority are not empowered to demolish a building erected contrary to this section, nor has a justice power to make an order to that effect, unless, perhaps, if the highway is obstructed: see *Bagshaw v. Buxton*

L. B. (1875), 1 Ch. D. 220; 40 J. P. 197; 26 Digest 449, 1652, and *Reynolds v. Presteign U. D. C.*, ante, p. 4728.

The plaintiffs, owners of a house and area situate in and fronting a street, altered the front of the house by throwing out bay windows projecting beyond the street line of frontage, but not beyond the limits of the area. After the completion of the work the defendants, the local authority, threatened the plaintiffs with summary proceedings under the repealed s. 156, ante, p. 4432. The plaintiffs then moved *ex parte* for an injunction to restrain the defendants from taking these proceedings, alleging—(1) that as the alteration had been made over their own property, the defendants in threatening proceedings were acting *ultra vires*; (2) that the defendants, having had notice of the plaintiffs' intention to make the alterations, were bound by acquiescence; and (3) that the justices had no jurisdiction, as the defendants had not made their complaint within six months. The motion was refused on the ground that the court could not restrain criminal proceedings, and that the grounds suggested for interference were matters of defence to be used before the magistrates (*Kerr v. Preston Corporation* (1876), 6 Ch. D. 463; 26 Digest 559, 2541).

The legislature having provided by the text a particular mode of proceeding in case of offence, the court will be very slow to exercise its jurisdiction (if it has any) to restrain the local authority from pursuing the statutory remedy, or to make a declaration inconsistent with the right to pursue such remedy, unless it is proved that any trespass is threatened or intended by the local authority (*Grand Junction Waterworks v. Hampton U. D. C.*, [1898] 2 Ch. 331; 62 J. P. 566; 26 Digest 562, 2568; followed in *Williams v. Weston-super-Mare U. D. C.* (No. 2) (1910), 74 J. P. 370; 103 L. T. 9; and *Merrick v. Liverpool Corporation*, [1910] 2 Ch. 449; 74 J. P. 445; 38 Digest 218, 522; and cf. *Dyson v. Att.-Gen.*, [1912] 1 Ch. 158).

The words of this paragraph are similar to those of the repealed s. 156. It was held, with reference to that section, that an offence to which the penalty was applicable continued as long as the addition to the house was maintained after written notice from the urban authority, notwithstanding that the addition was completed before the notice was given (*Rumball v. Schmidt* (1882), 8 Q. B. D. 603; 46 J. P. 567; 26 Digest 562, 2572). It has also been held that under s. 3, *supra*, a penalty may be imposed time after time if the offence is continued (see *Att.-Gen. v. Wimbledon House Estate Co.*, *infra*).

The penalty will be recoverable summarily under the P.H.A., 1875, s. 251, ante, p. 4481. The notice will be given and authenticated as provided by ss. 266 and 267 of the last-mentioned Act, ante, pp. 4494—51.

A person purchased a house from a builder who had in building it committed an offence under s. 3. It was held that the purchaser did not commit an offence against the section by maintaining the house after notice from the urban authority in the same state as it was in at the time he bought it (*Blackpool Corporation v. Johnson*, [1902] 1 K. B. 646; 26 Digest 562, 2573).

The offence prohibited by the section is one compound offence, consisting of building without consent, and continuing after notice, for which a penalty is imposed to be exacted by the urban authority. Therefore, a private individual has no cause of action against a neighbour who erects a building in advance of the building line (*Mullis v. Hubbard*, ante, p. 4779). Nor will an indictment lie (*ibid.*). A summary remedy is not, however, the only remedy available. Defendants commenced to erect a building contrary to the provisions of s. 3, and, after due notice, were summoned by the urban authority and fined. The defendants paid the fine and continued, and threatened to complete, the erection of the building. The Attorney-General, at the relation of the urban authority, moved for a mandatory injunction to compel the pulling down of so much of the building as infringed the statute. The defendants objected to the action on the double ground that the only remedy was the one given by statute, that if there was a double remedy by proceedings before the justices and an injunction, only one could be adopted, and further, that there had been laches. It was held that it was lawful for the Attorney-General to take action, although there was also a statutory remedy; that as the offence was a continuing one, the Attorney-General could sue for an injunction, although proceedings had been taken before the justices; that, in fact, there had been no laches, and, there having been a breach of the statute, a mandatory injunction must be granted (*Att.-Gen. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34; 68 J. P. 341; 42 Digest 753, 1779). In *Att.-Gen. v. Denby*, ante, p. 4779, the relator failed upon the question whether consent has been given by the local authority, but it does not seem to have been doubted by the court that an action by the Attorney-General would be *ex. rel.* a person aggrieved by the bringing forward of the building, if the local authority's consent had not been given or was (*e.g.*, because the plans could not lawfully be passed) ineffective.

Section 1.

THE TOWN POLICE CLAUSES ACT, 1889.

(52 & 53 VICT. c. 14.)

An Act to amend the provisions relating to Hackney Carriages of the Town Police Clauses Act, 1847. [24th June, 1889.]

Whereas it is expedient to amend the provisions with respect to hackney carriages of the Town Police Clauses Act, 1847, in this Act called the principal Act (a) :

10 & 11 Vict.
c. 89.
Short title.

10 & 11 Vict.
c. 89.

1. This Act may be cited as the Town Police Clauses Act, 1889, and this Act and the Town Police Clauses Act, 1847, may be cited together as the Town Police Clauses Acts, 1847 and 1889 (a).

(a) Italicised words repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175). The Town Police Clauses Act, 1847, in so far as it was incorporated with the P. H. A., 1875, is set out, *ante*, p. 4222. The Act was repealed by the Road Traffic Act, 1930, s. 122, Sched. V. (23 Halsbury's Statutes 687, 695), and S. R. & O., 1931, No. 165 (24 Halsbury's Statutes 467), so far as it relates to public service vehicles; the expression "public service vehicle" is, however, in the Act of 1930 (23 Halsbury's Statutes 686) limited to motor vehicles (and not all motor vehicles, but the exceptions are not here material). The present Act is thus left standing so far as it relates to omnibuses drawn by animals or birds.

Construction of
Act.

2.—(1) This Act shall be construed as one with the principal Act, and the expression "this Act" in the principal Act shall be construed to mean the principal Act as amended by this Act.

38 & 39 Vict.
c. 55.

(2) This Act shall be deemed to be incorporated with the Public Health Act, 1875, by section one hundred and seventy-one of that Act (a).

(a) See this section, *ante*, p. 4458.

Defining
"omnibus."

3. The term "omnibus" where used in this Act, shall include—

Every omnibus, char-à-banc, wagonette, brake, stage coach, and other carriage plying or standing for hire (a) by or used to carry passengers at separate fares to, from, or in any part of the prescribed distance (b); but shall not include—

33 & 34 Vict.
c. 78.

Any tramcar or tram carriage duly licensed under the provisions of the Tramways Act, 1870, or of any Provisional Order made thereunder and confirmed by Parliament, or under the provisions of any local Act of Parliament :

Any carriage starting from and previously hired for the particular passengers thereby carried at any livery stable yard (within the prescribed distance) whereat horses are stabled and carriages let for hire, the said carriage starting from the said stable yard and being bona fide the property of the occupier thereof, and not standing or plying for hire (c) within the prescribed distance :

Any omnibus belonging to or hired or used by any railway company for conveying passengers and their luggage to or from any railway station of that company, and not standing or plying for hire within the prescribed distance (d) :

Any omnibus starting from outside the prescribed distance, and bringing passengers within the prescribed distance, and not standing or plying for hire within the prescribed distance (e).

(a) The "standing for hire" may be on private ground (*Birmingham & Midland Motor Omnibus Co. v. Thompson*, [1918] 2 K. B. 105; 82 J. P. 213; 42 Digest 853, 76; *Crack v. Holt* (1927), 91 J. P. 36; 25 L. G. R. 114; 42 Digest 854, 82.

(b) The prescribed distance means within the urban district (see s. 171 of the P. H. A., 1875, *ante*, 4458), or rural parish in which the urban powers have been declared to be in force by an order under s. 276 of the P. H. A., 1875, *ante*, p. 4502, or s. 13 of the P. H. A., 1936, *ante*, p. 19.

(c) As to what amounts to standing or plying for hire, reference may be made to the cases cited in the notes to Town Police Clauses Act, 1847, c. 89, s. 38, *ante*, p. 4237. It

is important to observe that the words are not, as in the older Act, "standing or plying for hire in a street." An omnibus may, therefore, be standing or plying for hire while it is on private property, such as a railway station. See *Clarke v. Stanford* (1871), L. R. 6 Q. B. 357; 35 J. P. 662; 42 Digest 853, 77; *Allen v. Tunbridge (Trowbridge)* (1871), L. R. 6 C. P. 481; 35 J. P. 695; 42 Digest 853, 78; *Foinett v. Clark* (1877), 41 J. P. 359; 42 Digest 854, 80; *Skinner v. Usher* (1872), L. R. 7 Q. B. 423; 36 J. P. 693; 42 Digest 861, 139; *Curtis v. Embery* (1872), L. R. 7 Exch. 369; 42 Digest 856, 93.

(d) It seems to follow from these words that to be within this exception the omnibus must not be allowed to stand about for hire by any one who may desire to use it, for it would then be standing or plying for hire; and that unless the Act is to apply the omnibus must be hired before it is brought out.

(e) An omnibus coming from one district will not be required to be licensed in another, though used for bringing passengers into the latter, unless it stands or plies for hire in the latter. An omnibus starting from outside the district and going to a point within the district where it waited from fifteen to twenty minutes for the purpose of taking up passengers, parcels, etc., for the return journey, was held not to come within the exception on the ground that it plied for hire within the district (*Dewhurst v. Eddles* (1893), 57 J. P. N. 373; 9 T. L. R. 494. And an omnibus which sometimes waited on the highway and sometimes commenced the return journey at once was held on the facts to be plying for hire and therefore not within the exception (*R. v. Fletcher, Ex parte Ansonia* (1908), 72 J. P. 249; 98 L. T. 749; 42 Digest 854, 84). See also *Sales v. Lake*, [1922] 1 K. B. 553; 86 J. P. 80; 42 Digest 855, 90; *Armstrong v. Ogle*, [1926] 2 K. B. 438; 90 J. P. 146; 42 Digest 854, 85; *Leonard v. Western Services, Ltd.*, [1927] 1 K. B. 702; 91 J. P. 18; 42 Digest 854, 86; *Greyhound Motors, Ltd. v. Lambert*, [1928] 1 K. B. 322; 91 J. P. 198; 42 Digest 855, 91; *Griffin v. Grey Coaches, Ltd.* (1928), 93 J. P. 61; 42 Digest 855, 92; and *Att.-Gen. v. Sharp* (1929), 45 T. L. R. 628; Digest Supp. The facts of these cases are set out at p. 4238, *ante*.

4.—(1) The several terms "hackney carriages," "hackney coach," "carriages," and "carriage," whenever used in sections thirty-seven, forty to fifty-two (both inclusive), fifty-four, fifty-eight, and sixty to sixty-seven (both inclusive) of the principal Act shall, notwithstanding anything contained in section thirty-eight of that Act, be deemed to include every omnibus (a).

Extending certain provisions of principal Act to omnibuses.

(2) The word "driver" or "drivers" when used in any of the said sections of the principal Act shall be deemed to include every conductor of any omnibus.

(3) For the purposes of sections fifty-four, fifty-eight, and sixty-six of the principal Act, the fare, according to the statement of fares exhibited on any omnibus, shall be deemed to be the fare allowed by the principal Act or authorised by any byelaw under that Act.

(a) See these sections, *ante*, pp. 4236 *et seq.* and, as regards "motor omnibuses" note (a) to s. 1 of the present Act, *ante*, p. 4784. Section 68 of the Act of 1847, *ante*, p. 4246, is not incorporated, and this is the section giving power to make byelaws for the purpose (*inter alia*) of fixing the fares to be paid for hackney carriages. It has been held that there is no power to fix fares with reference to omnibuses and that therefore a local authority is not entitled to refuse the renewal of a licence on the ground that the fares charged are excessive (*R. v. Farnborough U. C., Ex parte Aldershot District Traction Co., Ltd.*, [1920] 1 K. B. 234; 83 J. P. 290; 42 Digest 857, 100). See, however, the comments on this case in *R. v. Minister of Transport, Ex parte H. C. Motor Works, Ltd.*, [1927] 2 K. B. 401; 91 J. P. 83; 42 Digest 857, 101.

5. Any licence may be granted under the principal Act to continue in force for such less period than one year as the Commissioners may think fit, and shall specify in the licence (a).

Licences may be granted for short periods.

(a) See the Town Police Clauses Act, 1847, s. 43, *ante*, p. 4239. The appeal against a local authority's refusal to grant a licence, where still appropriate under this Act (*vide*, note (a) to s. 1, *ante*, p. 4784), is to the Minister of Transport under sub-s. (3) of s. 14 of the Roads Act, 1920; 19 Halsbury's Statutes 98. (The marginal note to that section, given in the King's Printer's copy and therefore printed as a section heading in Halsbury's Statutes, is misleading). For public service vehicles the appeal as well as the licence now depends upon Part IV. of the Road Traffic Act, 1930; 23 Halsbury's Statutes 654.

6. The Commissioners may from time to time make byelaws (a) for all or Byelaws. any of the following purposes, that is to say :

For regulating the conduct (b) of the proprietors, drivers, and conductors of omnibuses plying within the prescribed distance in their several

Section 6.

employments, and determining whether such drivers and conductors shall wear any and what badges :

For regulating the manner in which the number of each omnibus corresponding with the number of its licence shall be displayed :

For regulating the number of persons to be carried by such omnibus, and in what manner such number is to be shown thereon (c) :

For regulating the number and securing the fitness of the animals to be allowed to draw an omnibus, and for the removal therefrom of unfit animals :

For securing the fitness of the omnibus and the harness of the animals drawing the same :

For fixing the stands for omnibuses and the points at which they may stop a longer time than is necessary for the taking up and setting down of passengers desirous of entering or leaving the same :

For securing the safe custody and re-delivery of any property accidentally left in any omnibus, and fixing the charge to be made in respect thereof (d).

To provide for the carrying and the lighting of proper lamps for denoting the direction in which the omnibus is proceeding, and promoting the safety and convenience of the passengers carried thereby :

To provide for the exhibition on some conspicuous part of every omnibus of a statement in legible letters and figures of the fares to be demanded, and received from the persons using or carried for hire in such omnibus (e) :

To prevent within the prescribed distance—

- (a) the owner, driver, or conductor of any omnibus, or any other person on their or his behalf, by touting, calling out, or otherwise, from importuning any person to use or to be carried for hire in such omnibus, to the annoyance of such person or of any other person ;
- (b) the blowing of or playing upon horns or other musical instruments, or the ringing of bells, by the driver or conductor of any omnibus, or by any person travelling on or using any such omnibus.

Provided that nothing in this Act contained shall empower the Commissioners to fix the site of the stand of any omnibus in any railway station or in any yard adjoining or connected therewith, except with the consent of the railway company owning such site.

(a) Neither the L. G. B. nor the M. of H. ever issued model byelaws for purposes of this section, and for practical purposes the section is now otiose. The L. G. B. once expressed the view that byelaws could not be made for controlling the routes of omnibuses, and the Home Office were of opinion that this object could not be attained by a town council under the Municipal Corporation Acts. See, however, s. 14 (3) of the Roads Act, 1920, Vol. V., *post*, and *R. v. Bradford Corporation, Ex parte Minister of Transport* (1926), 90 J. P. 140; 135 L. T. 227 ; 42 Digest 856, 99, decided thereunder, which in spite of the alteration of the law by the Roads Act, 1930 (*vide note (a)* on s. 1, *ante*, p. 4784), may still apply to vehicles which are not public service vehicles, and also the London Traffic Act, 1924, Vol. V., *post*.

(b) The respondent was summoned for touting for a hackney carriage in a public thoroughfare contrary to a byelaw which provided : " A person shall not in any public thoroughfare in the district tout for a hackney carriage." He stood on a triangular piece of land at a street corner touting for hackney carriages, having received permission from the freeholders of the piece of land to stand on it for the purpose of his business. The piece of land was always open to the public, and the street (including the piece of land) had been declared a public highway. It was held that the fact that the piece of land on which the respondent stood belonged to private persons did not prevent his act from being an offence against the byelaw (*Dereham v. Strickland* (1911), 75 J. P. 300 ; 104 L. T. 820 ; 42 Digest 862, 144).

(c) Where byelaws made under this provision contained a byelaw that no greater number of passengers should be conveyed in " any omnibus " than the number specified and in the same and other byelaws contained provisions applicable only to horse-drawn omnibuses, it was held that the respondent was liable for a contravention of the byelaw in respect of

a motor omnibus (*Neal v. Guy*, [1928] 2 K. B. 451; 92 J. P. 119; 42 Digest 858, 116). This case is, however, no longer good law: *vide* note (a) upon s. 1, *ante*, p. 4784. See also as to proceedings under the Railway Passenger Duty Act, 1842, for overcrowding omnibuses as stage carriages (*Dennis v. Miles*, [1924] 2 K. B. 399; 88 J. P. 105; 42 Digest 858, 115; *Kirkby v. Minty*, [1929] 2 K. B. 165; 93 J. P. 176; Digest Supp.; *M'Kee v. Weir*, [1929] S. C. (J.) 14; Digest Supp.).

(d) Up to this point there is little difference between the provisions of this section and those of the Town Police Clauses Act, 1847, s. 68, *ante*, p. 4246. The byelaws under this section do not regulate the hours of employment, but, on the other hand, they may regulate the fitness of the horses and harness. The rest of the section is an addition to the previous law as to hackney carriages.

(e) This provision contemplates that the omnibus proprietors will themselves fix the fares, because, so far as fares are concerned, the power to make byelaws is limited to byelaws requiring the exhibition on the omnibus of a statement of the fares to be demanded (*R. v. Farnborough U. C., Ex parte Aldershot District Traction Co., Ltd.*, *ante*, p. 4785).

Note to
Section 6.

THE ARBITRATION ACT, 1889.

(52 & 53 VICT. C. 49) (r).

An Act for amending and consolidating the Enactments relating to Arbitration.
[26th August 1889.]

This Act, by s. 24, *post*, p. 4793, applies to arbitrations under the P. H. A., save in so far as its provisions are inconsistent with those of s. 180 of the P. H. A., 1875, *ante*, p. 4462, or s. 303 of the P. H. A., 1936, *ante*, p. 635. It also applies to arbitrations with regard to adjustments under the L. G. A., 1933, *ante*, p. 968. The notes are limited to an indication of the sections which do not apply to such arbitrations and to references to the chief decisions upon the Act. For full notes on the Act, see Yearly Supreme Court Practice, Vol. II. Arbitration as to compensation for the compulsory acquisition of land by a public authority is not subject to this Act but to the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213.

REFERENCES BY CONSENT OUT OF COURT.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court.

Submission to be irrevocable, and to have effect as an order of court.

Where there is an agreement to refer to three arbitrators, one to be appointed by each party and one by the two arbitrators so appointed, see the Arbitration Act, 1934, s. 4, Vol. V., *post*. As to revocation on account of bias, see *In re Baring Bros. & Co. and Doulton & Co.* (1892), 61 L. J. Q. B. 704; 2 Digest 392, 516; *Eckersley v. Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667; 2 Digest 370, 362; *In re Haigh and L. & N. W. Rail. Cos.*, [1896] 1 Q. B. 649; 2 Digest 550, 1818; or of misconduct, *In re Brien*, [1910] 2 I. R. 84; 2 Digest 447, 958 *ii*. An appeal from a judge at chambers giving leave to revoke a submission to arbitration lies to the Court of Appeal and not to a Divisional Court (*In re Portland U. D. C. and Tilley & Co.*, [1896] 2 Q. B. 98; 2 Digest 393, 523); but see *In re Frere and Staveley Taylor & Co. and North Shore Mill Co., Ltd.*, [1905] 1 K. B. 366; 2 Digest 459, 1052. The last-mentioned case was not followed in *Simbro Trading Co., Ltd. v. Posograph (Parent) Corporation, Ltd.*, [1929] 2 K. B. 266; Digest Supp.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the First Schedule to this Act, so far as they are applicable to the reference under the submission.

Provisions implied in submission.

See the notes to the First Schedule, *post*, p. 4794. This section was held to apply to all submissions, whether made before or after the passing of this Act (*In re Williams and Stepney*, [1891] 2 Q. B. 257; 2 Digest 585, 2185). See *French Government v. Owners of S.S. Tsushima Maru* (1921), 37 T. L. R. 961; Digest Supp., where a practice adopted in commercial arbitrations was upheld.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

Reference to official referee.

This section cannot apply to arbitrations under the P. H. Acts.

Section 4.

Powers to stay proceedings where there is a submission.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

A county court judge has jurisdiction under this section to stay any legal proceedings in his court (*Morrison Timplat Co. v. Brooker, Dore & Co.*, [1908] 1 K. B. 403; 2 Digest 361, 311). The court has a discretion to stay under this section (*In re Carlisle, Clegg v. Clegg* (1890), 44 Ch. D. 200; 2 Digest 371, 371; *Barnes v. Youngs*, [1898] 1 Ch. 414; 2 Digest 368, 356; *Hodson v. Railway Passengers' Assurance*, [1904] 2 K. B. 833; 29 Digest 402, 3186; *Bonnin v. Neame*, [1910] 1 Ch. 732; 2 Digest 365, 336; *Aspell v. Seymour*, [1929] W. N. 152 (assignees of contract)). Poverty of a plaintiff is not, by itself, a sufficient ground for refusing to order a stay (*Smith v. Pearl Assurance Co., Ltd.*, [1939] 1 All E. R. 95; Digest Supp.). Where arbitration proceedings have proved abortive, the provisions of the section in the text would not be available. In an action brought upon a contract whereby the parties have provided for arbitration as a means of ascertaining the amount due under the contract, if arbitration proceedings have proved abortive it is the duty of the Court to supply the defect by itself ascertaining the amount due (*Cameron v. Cuddy*, [1914] A. C. 651; 2 Digest 382, 441). In *Jureidini v. National Millers, etc. Co., Ltd.*, [1915] A. C. 499; 2 Digest 333, 146, it was held that the repudiation of a claim under a policy going to the root of the contract precluded the company from pleading the arbitration clause as a bar to an action to enforce the claim. Cf. *Woodall v. Pearl Assurance Co., Ltd.*, [1919] 1 K. B. 593; Digest Supp., when *Jureidini's* case, *supra*, was distinguished. Where a question arises as to whether a contract containing an arbitration clause is alive or dead, it is in the Judge's discretion to say that it is not a proper question to be submitted to arbitration (*Edward Grey & Co. v. Tolme* (1914), 31 T. L. R. 137; 2 Digest 366, 343). The fact that an important question of law will have to be considered is not a sufficient reason for refusing a stay (*Lock v. Army, etc. Assurance Association, Ltd.* (1915), 31 T. L. R. 297; 2 Digest 371, 373). But see *Clough v. County, etc. Association, Ltd.* (1946), 32 T. L. R. 526; 2 Digest 367, 345. As to what amounts to a step in the proceedings, see *Chappell v. North*, [1891] 2 Q. B. 252; 2 Digest 362, 316; *Brighton Marine Palace and Pier, Ltd. v. Woodhouse*, [1893] 2 Ch. 486; 2 Digest 367, 347; *Ives v. Willans*, [1894] 2 Ch. 478; 2 Digest 370, 363; *Adams v. Cailey* (1892), 66 L. T. 687; 40 W. R. 570; 2 Digest 375, 396; *Ford's Hotel Co. v. Bartlett*, [1896] A. C. 1; 2 Digest 376, 406; *Zalimoff v. Hammond*, [1898] 2 Ch. 92; 2 Digest 376, 407; *County Theatres and Hotels, Ltd. v. Knowles*, [1902] 1 K. B. 480; 2 Digest 376, 399; *Richardson v. Le Maître*, [1903] 2 Ch. 222; 2 Digest 376, 400; *Anglo-Newfoundland Development Co. v. The King*, [1920] 2 K. B. 214; Digest Supp. Where a receiver is appointed, an order may be made staying all proceedings, except for the purpose of carrying out the order for a receiver (*Pini v. Roncoroni*, [1892] 1 Ch. 633; 2 Digest 367, 349), or the motion for a receiver may be ordered to stand over till the completion of the arbitration (*Zalimoff v. Hammond*, *supra*). Where there is an agreement to refer to three arbitrators, one to be appointed by each party and one by the two arbitrators so appointed, a judge at chambers has jurisdiction to stay under this section (*Manchester Ship Canal Co. v. Pearson & Sons, Ltd.*, [1900] 2 Q. B. 606; 2 Digest 363, 326). Where works are constructed for a local authority under a contract which provides for the reference of disputes thereunder to an officer of the local authority, and the contractor sues the local authority on the contract, the court will not order the action to be stayed on the submission to arbitration, when the contractor charges the arbitrator with unreasonable conduct in relation to the works, and it appears that there is a substantial dispute between the parties as to the conduct of the arbitrator (*Blackwell & Co., Ltd. v. Derby Corporation* (1909), 75 J. P. 129; 2 Digest 370, 365). And see *Freeman & Sons v. Chester R. D. C.*, [1911] 1 K. B. 783; 75 J. P. 132; 2 Digest 370, 366; *Bristol Corporation v. Aird & Co.*, [1913] A. C. 241; 77 J. P. 209; 2 Digest 370, 367; *Doleman & Sons v. Ossett Corporation*, [1912] 3 K. B. 257; 76 J. P. 457; 2 Digest 353, 278; *Metropolitan Tunnel and Public Works v. London Electric Railway Co.*, [1926] Ch. 371; 135 L. T. 35; Digest Supp. See also *Monro v. Bognor U. D. C.*, [1915] 3 K. B. 187; 79 J. P. 286; 2 Digest 347, 237, where an action was brought for fraudulently inducing plaintiff to enter into a contract containing an arbitra-

**Note to
Section 4.**

tion clause. The Court held that the dispute was not one "upon or in relation to or in connection with the contract" within the meaning of the arbitration clause, and that the defendants were not entitled to have the proceedings stayed.

A sewerage contract provided that no claim for extras should be allowed unless submitted to the engineers within a given time; that the engineers should be sole judges as to the method of carrying out the works, and the materials to be used in their construction; and that in case of any dispute arising at any time whether during the progress of the works or after completion, as to certain specified matters not including extras, and as to all other matters therein left to the decision of the engineers, their decision should be final and binding on all parties. It was held that a claim for extras was not within the scope of the arbitration clause, and consequently that an action by the contractor for the amount of the claim ought to be allowed to proceed (*Taylor v. Western Valleys (Monmouthshire) Sewerage Board* (1911), 75 J. P. 409; 2 Digest 373, 384). See also *Beattie v. Beattie, Ltd.*, *post*, p. 4794.

This section has no application to arbitrations under the P. H. A., 1875, s. 180, *ante*, p. 4462, but it will apply to arbitration clauses in contracts with sanitary authorities. See *Nuttall v. Manchester Corporation* (1892), 8 T. L. R. 513; 2 Digest 369, 361.

5. In any of the following cases :

- (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator (a) :
- (b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy (b) :
- (c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator [or where two arbitrators are required to appoint an umpire (c)] and do not appoint him (d) :
- (d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy (d) :

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the court or a judge may (e), on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

(a) This cannot apply to arbitrations under s. 180 of the P. H. A., 1875, *ante*, p. 4462. It seems, however, to be applicable to arbitrations in respect of adjustments under s. 151 of the L. G. A., 1933, *ante*, p. 962, or s. 303 of the P. H. A., 1936, *ante*, p. 635.

(b) This cannot apply in cases under the P. H. A., 1875, s. 180, *ante*, p. 4462. See as to the effect of the clause, *In re Wilson & Son and Eastern Counties Navigation and Transport Co.*, [1892] 1 Q. B. 81; 2 Digest 331, 137.

(c) These words were added by the Arbitration Act, 1934, s. 5 (1) (27 Halsbury's Statutes 30).

(d) This cannot apply to arbitrations under the P. H. A., 1875. See s. 180 (7), *ante*, p. 4463.

(e) In ordinary cases this is equivalent to *must* (*In re Eyre and the Corporation of Leicester*, [1892] 1 Q. B. 136; 56 J. P. 228; 2 Digest 409, 629). The court has a discretion, however, and may in a proper case refuse to make an appointment except upon terms (*In re Bjornstad and The Ouse Shipping Co.*, [1924] 2 K. B. 673; 131 L. T. 663; Digest Supp.). See as to procedure under this section, *Taylor v. Denny, Mott and Dickson, Ltd.*, [1912] A. C. 666; 76 J. P. 417; 2 Digest 408, 631, and as to appeals from the master and the judge, *Miller, Gibb & Co. v. Smith and Tyrer, Ltd.*, [1916] 1 K. B. 419; 2 Digest 408, 630.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary contention—

- (a) If either of the appointed arbitrators refuses to act, or is incapable

Power for parties in certain cases to supply vacancy—

Section 6.

of acting, or dies, the party who appointed him may appoint a new arbitrator in his place (7) ;

- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

Provided that the court or a judge may set aside any appointment made in pursuance of this section (b).

(a) A similar provision is contained in P. H. A., 1875, s. 180 (5), *ante*, p. 4463.

(b) An appointment under s. 180 (5) will not, apparently, be made in pursuance of this section, though the effect of the two provisions is similar.

Powers of arbitrator.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

- (a) To administer oaths to or take the affirmations of the parties and witnesses appearing (a) ; and
 (b) To state an award as to the whole or part thereof in the form of a special case for the opinion of the court (b) ; and
 (c) To correct in an award any clerical mistake or error arising from any accidental slip or omission (c).

(a) See P. H. A., 1875, s. 180 (12), *ante*, p. 4464.

(b) This paragraph is repealed by the Arbitration Act, 1934, s. 21 (6), Sched. III. (27 Halsbury's Statutes 37, 38) ; and see *ibid.*, s. 9 (1) (27 Halsbury's Statutes 32). The paragraph had previously been excluded by the Town and Country Planning Act, 1932, s. 40 (4), *ante*, p. 1969.

(c) As to what is an "accidental slip or omission," see *Sutherland & Co. v. Hanmerig Bros., Ltd.*, [1921] 1 K. B. 336 ; 37 T. L. R. 102 ; Digest Supp.

Witnesses may be summoned by subpoena.

8. Any party to a submission may sue out a writ of subpoena ad testificandum, or a writ of subpoena duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

This section will apply to an arbitration under P. H. A., 1875, s. 180, *ante*, p. 4462.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.

This section enables the court to enlarge the time beyond the two months limited by s. 180 (9) of the P. H. A., 1875, *ante*, p. 4463 (*Knowles & Sons, Ltd. v. Bolton Corporation*, [1900] 2 Q. B. 253 ; 2 Digest 420, 722).

Power to remit award.

10.—(1) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

This section will, apparently, apply to an arbitration under s. 180 of the P. H. A., 1875, *ante*, p. 4462. The court may, under this section, remit an award upon the ground that fresh evidence has been discovered since the award was made, although the arbitrator does not join in asking the court to remit it. Such evidence need not be strictly legal evidence, though it must be such as may affect the arbitrator's decision (*In re Keighley, Maxsted & Co. and Durant & Co.*, [1893] 1 Q. B. 405 ; 2 Digest 563, 1949). Under this section matters may be remitted for reconsideration, although the arbitrator, having made his award, is *functus officio* (*In re Stringer and Riley Brothers*, [1901] 1 K. B. 105 ; 2 Digest 562, 1947).

11.—(1) Where an arbitrator or umpire has misconducted himself [or **Section 11.** the proceedings], the court may remove him.

(2) Where an arbitrator or umpire has misconducted himself [or the proceedings], or an arbitration or award has been improperly procured, the court may set the award aside. **Power to set aside award.**

The words in square brackets were added by the Arbitration Act, 1934, s. 15 (27 Halsbury's Statutes 34). See also *ibid.*, s. 3, as to the court's powers.

As to misconduct, see *In re Kenworthy and Queen Insurance Co.* (1893), 9 T. L. R. 181; *In re Gregson and Armstrong* (1894), 70 L. T. 106; 10 R. 408; 2 Digest 447, 956; *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131; 2 Digest 456, 1037; *Schofield v. Allen* (1904), 116 L. T. N. 239; 48 Sol. Jo. 176; 2 Digest 412, 647; *In re Enoch and Zaretsky, Bock & Co.*, [1910] 1 K. B. 327; 2 Digest 434, 840; *Buerger & Co. v. Barnett* (1919), 35 T. L. R. 260; Digest Supp. The order setting aside the award is an interlocutory and not a final order (*Re Croasdel and Cammell, Laird & Co.*, [1906] 2 K. B. 569; 2 Digest 462, 1083). Leave to appeal from an order of the Divisional Court setting aside an award is not necessary (*Ruf v. Pauwels*, [1919] 1 K. B. 660; 83 J. P. 150; Digest Supp.). An application to set aside an award may be made to a single judge and need not be made to the Divisional Court (*Produce Brokers, Ltd. v. Blyth, Greene, Jourdain & Co., Ltd.* (1918), 34 T. L. R. 419; 16 Digest 180, 851).

12. An award on a submission may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect. **Enforcing award.**

In some cases this section may also apply, as it affords another remedy in addition to that given by s. 180 (14) of the P. H. A., 1875, *ante*, p. 4464. But an award under s. 150 of that Act, *ante*, p. 4388, cannot be enforced under this section (*In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 60 J. P. 708; 2 Digest 567, 1933). Summons to enforce an award under s. 12 cannot be served upon a foreigner resident out of the jurisdiction (*Rasch & Co. v. Wulfert*, [1904] 1 K. B. 118; 2 Digest 567, 1935). An appeal from an order of a judge at chambers under this section lies direct to the Court of Appeal, and not to a Divisional Court (*Re Colman and Watson*, [1908] 1 K. B. 47; 2 Digest 568, 1986). An award against the Crown in an arbitration under this Act will not be enforced by the court under this section (*Grech v. Board of Trade* (1923), 92 L. J. K. B. 956; 130 L. T. 15; Digest Supp.).

REFERENCES UNDER ORDER OF COURT.

The sections in this part which were repealed by and re-enacted in the Supreme Court of Judicature (Consolidation) Act, 1925 (4 Halsbury's Statutes 146), apply only to references by the court, and not to arbitrations under s. 180 of the P. H. A., 1875, *ante*, p. 4462. They will, however, apply to actions by or against sanitary authorities. The sections here set out are the corresponding provisions of the 1925 Act. Section 97 of that Act (13 Halsbury's Statutes 234) provides that in these sections "court" means the High Court and "reference" means a reference under an order made by the court or a judge under ss. 88—97 (*op. cit.* 230—234).

13 [S. 88, 1925].—(1) Subject to Rules of Court and to any right to have particular cases tried by a jury, the court or a judge may refer to an official or special referee for inquiry or report any question arising in any cause or matter (other than a criminal proceeding by the Crown). **Reference for report.**

(2) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

14 [S. 89, 1925]. In any cause or matter, other than a criminal proceeding by the Crown,— **Power to refer in certain cases.**

- (a) If all the parties interested who are not under disability consent: or,
- (b) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury, or conducted by the court through its other ordinary officers: or
- (c) If the question in dispute consists wholly or in part of matters of account (a);

Section 14. the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court (b).

(a) This applies where the main, although not the only, question in dispute is a matter of account (*Hurlbutt v. Barnett*, [1893] 1 Q. B. 77; 2 Digest 623, 2522).

(b) Where an action has been referred for trial under this section, the court or a judge still retains the power, and the referee or arbitrator has also jurisdiction, to order inspection of property. As a general rule, the most convenient course is to apply to the referee or arbitrator in the first instance (*Macalpine v. Calder*, [1893] 1 Q. B. 545; 2 Digest 629, 2559). An appeal lies to the Court of Appeal (without leave) from an order of the High Court refusing to order a new trial (*Munday v. Norton*, [1892] 1 Q. B. 403; 2 Digest 633, 2601).

Powers and remuneration of referees and arbitrators.

15 [S. 90, 1925].—(1) In all cases of reference to an official or special referee or arbitrator, the official or special referee or arbitrator shall be deemed to be an officer of the court, and, subject to Rules of Court (a), shall have such authority, and conduct the reference in such manner, as the court or a judge may direct.

(2) The report or award of an official or special referee or arbitrator on any reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury (b).

(3) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under an order of the court or a judge shall be determined by the court or a judge (c).

(a) See R. S. C., Order XXXVI., rr. 45 et seq.

(b) As to the power of the court under this sub-section, see *Darlington Wagon Co. v. Harding and Trouville Pier and Steamboat Co.*, [1891] 1 Q. B. 245; 2 Digest 631, 2580. As to its effect on costs, see *Carr Brothers v. Dougherty* (1898), 67 L. J. Q. B. 371; 14 T. L. R. 237; 2 Digest 604, 2353. The sub-section does not apply where an action is stayed and arbitration directed under a submission by the parties (*Warburg v. McKerrow* (1904), 90 L. T. 644; 2 Digest 604, 2352).

(c) As to the right of the arbitrator to recover fees, see *Willis v. Wakeley Brothers* (1891), 7 T. L. R. 604; 2 Digest 427, 779.

Court to have powers as in references by consent.

16 [S. 91, 1925]. The court or a judge shall, in relation to references, have all such powers as are conferred by the Arbitration Act, 1889, on the court or a judge as to references by consent out of court.

Court of Appeal to have powers of court.

17 [S. 92, 1925]. The Court of Appeal shall have all such powers as are conferred by the provisions of this Part of this Act on the court or a judge in relation to references.

GENERAL.

Power to compel attendance of witness in any part of the United Kingdom and to order habeas corpus to issue.

18.—(1) The court or a judge may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

(2) The court or a judge may also order that a writ of habeas corpus ad testificandum shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

This section and ss. 19, 20, and 23 are repealed by the Act of 1925 in so far as they relate to references under an Order of the High Court. Corresponding provisions in relation to such references are contained in ss. 93, 94, 95, and 96 of the 1925 Act (13 Halsbury's Statutes 233).

This section will apply to arbitrations under the P. H. A., 1875, s. 180, *ante*, p. 4462.

19. [Statement of case pending arbitration.]

Repealed by the Arbitration Act, 1934, s. 21 (6), Sched. III.; 27 Halsbury's Statutes 37, 38. See now *ibid.*, s. 9 (2); 27 Halsbury's Statutes 32.

20. Any order made under this Act may be made on such terms as to costs **Section 20** or otherwise, as the authority making the order thinks just.

See note to s. 18, *ante*, p. 4792.

Costs.

See *Re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613; 57 J. P. 229; 2 Digest 459, 1056, and R. S. C., Order LXV. And see also *Gray v. Lord Ashburton*, [1917] A. C. 26; 81 J. P. 17; 2 Digest 585, 2187.

21. *Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this Act on the court or a judge.* **Exercise of powers by masters and other officers.**

This section was repealed by s. 29 and Sched. V. of the Administration of Justice Act, 1925 (4 Halsbury's Statutes 142, 144). See now Supreme Court of Judicature (Consolidation) Act, 1925, s. 99 (1) (d) (13 Halsbury's Statutes 234). The existing rules are continued in force by s. 226 (4 Halsbury's Statutes 201). See R. S. C., Order LIV., r. 12A, the effect of which is that any application under this Act can be dealt with by a Master, except applications under s. 11, *ante*, p. 4791, to remove an arbitrator or to set aside the award.

22. [*Penalty for perjury.*]

Repealed: see now the Perjury Act, 1911 (4 Halsbury's Statutes 772). If the evidence be merely prepared though not used, it is an indictable misdemeanor (*R. v. Vreones*, [1891] 1 Q. B. 360; 55 J. P. 536; 15 Digest 695, 7487).

23. This Act shall, except as in this Act expressly mentioned, apply to any arbitration to which her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the Duke of Cornwall, is a party, but nothing in this Act shall empower the court or a judge to order any proceedings to which her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of her Majesty or the Duke of Cornwall, as the case may be, *or shall affect the law as to costs payable by the Crown.* **Crown to be bound.**

See note to s. 18, *ante*, p. 4792.

See *Anglo-Newfoundland Development Co. v. The King*, [1920] 2 K. B. 214; Digest Supp.; *Grech v. Board of Trade* (1923), 92 L. J. K. B. 956; Digest Supp.; and *R. v. Minister of Labour*, [1924] 2 K. B. at p. 219; 88 J. P. at p. 133.

The words in italics were repealed by the Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 10 (3) (26 Halsbury's Statutes 92). As to costs in Crown proceedings, see now *ibid.*, s. 7 (26 Halsbury's Statutes 91).

24. This Act shall apply to every arbitration under any Act passed before or after the commencement of this Act, as if the arbitration were pursuant to a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorised or recognised by that Act. **Application of Act to references under statutory powers.**

For the effect of this section, see the headnote to this Act, *ante*, p. 4787, and *In re Willesden L. B. and Wright*, *ante*, p. 4791; and see *Murray v. Dalton* (1920), 37 T. L. R. 234; Digest Supp.

This section is excluded in a number of arbitrations directed by statute, most of which are not within the scope of this work. See, however, s. 40 (4) of the Town and Country Planning Act, 1932, *ante*, p. 1969.

25. [*Saving for pending arbitrations.*]

26.—(1) [*Repeal of enactments in Second Schedule.*]

(2) Any enactment or instrument referring to any enactment repealed by this Act shall be construed as referring to this Act.

27. In this Act, unless the contrary intention appears,—

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not (a).

Definitions.

Section 27.

“Court” means her Majesty’s High Court of Justice.

“Judge” means a judge of her Majesty’s High Court of Justice.

“Rules of Court” means the rules of the Supreme Court made by the proper authority under the Judicature Acts.

(a) The appointment of the arbitrators under s. 180 of the P. H. A., 1875, is to be deemed a submission. See sub-s. (2) of that section, *ante*, p. 4463. The fact that a person is appointed a director of a company whose articles provide that disputes between members and the company shall be referred to arbitration, is not a written agreement for submission (*Beattie v. Beattie, Ltd.*, [1938] Ch. 708; [1938] 3 All E. R. 214; Digest Supp.).

For the construction of this definition, see *Caerleon Tinplate Co. v. Hughes* (1891), 60 L. J. Q. B. 640; 65 L. T. 118; 2 Digest 315, 23; *Baker v. Yorkshire Fire and Life Assurance Co.*, [1892] 1 Q. B. 144; 2 Digest 315, 24; *Aitken v. Bachelor (Batchelor)* (1893), 62 L. J. Q. B. 193; 68 L. T. 530; 2 Digest 315, 25; *Austrian Lloyd Steamship Co. v. Gresham Life Assurance Society*, [1903] 1 K. B. 249; 2 Digest 364, 329; *Hickman v. Kent, etc. Association*, [1915] 1 Ch. 881; 2 Digest 315, 26; *Anglo-Newfoundland Development Co. v. The King*, [1920] 2 K. B. 214; 84 J. P. 121; Digest Supp.; *Clements v. County of Devon Insurance Committee*, [1918] 1 K. B. 94; 82 J. P. 71; *Lobitos Oilfields, Ltd. v. Lords Commissioners of the Admiralty* (1917), 33 T. L. R. 472; 2 Digest 458, 1050. “Future” differences do not include differences arising after the order for arbitration is made; *per Lord HALSBURY, C.*, in *London and N. W. and G. W. Joint Rail. Cos. v. Billington*, [1899] A. C. 79, at p. 81. But all matters material and incidental to the differences within the submission are within the scope of the arbitration (*Midland Rail. Co. v. Loseby and Carnley*, [1899] A. C. 133; 8 Digest 206, 1319).

Extent.

28. This Act shall not extend to Scotland or Ireland.

29. [Commencement of Act, January 1, 1890.]

Short title.

30. This Act may be cited as the Arbitration Act, 1889.

SCHEDULES.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator (a).

b. [If the reference is to two arbitrators, the two arbitrators shall appoint an umpire immediately after they are themselves appointed (b).]

c. [Repealed by the Arbitration Act, 1934, s. 21 (6), Sched. III.; 27 Halsbury’s Statutes 37, 38.]

d. If the arbitrators *have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators (c).*

e. [Repealed by the Arbitration Act, 1934, s. 21 (6), Sched. III.; 27 Halsbury’s Statutes 37, 38.]

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings, and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require (d).

g. The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation (d).

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively (e).

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client (f).

j. [The arbitrators or umpire shall have the same power as the court to order

specific performance of any contract other than a contract relating to land or any interest in land (g).]

Schedules.

k. [The arbitrators or umpire may, if they think fit, make an interim award (g).]

THE SECOND SCHEDULE (h).

* * * * *

(a) This clause does not apply to arbitrations under the P. H. A., 1875, having regard to s. 180 (7), *ante*, p. 4463. It seems, however, applicable to arbitrations as to adjustments under s. 151 of the L. G. A., 1933, *ante*, p. 962, or the P. H. A., 1936, s. 303, *ante*, p. 635.

(b) This clause was substituted for the original by the Arbitration Act, 1934, s. 5 (1) (27 Halsbury's Statutes 30).

(c) The words in italics were repealed by the Arbitration Act, 1934, s. 21 (4), Sched. III. (27 Halsbury's Statutes 37, 38). See *ibid.*, s. 6 (27 Halsbury's Statutes 31). See also P. H. A., 1875, s. 180 (8), and the note thereto, *ante*, p. 4463.

(d) These clauses slightly extend the powers conferred by P. H. A., 1875, s. 180 (12). This clause empowers the arbitrator to require discovery of documents and answers to interrogatories (*Kursell v. Timber Operators and Contractors*, [1923] 2 K. B. 202; 87 J. P. 79; Digest Supp.). As to the application of Schedule I. (f) to an arbitration to which a minister of the Crown is a party, see *Re La Societe les Affreteurs Reunis & The Shipping Controller*, [1921] 3 K. B. 1; Digest Supp. As to the competence of an arbitrator as a witness before the umpire, see *Bourgeois v. Weddell & Co.*, [1924] 1 K. B. 539; 130 L. T. 635; Digest Supp.

(e) See similar provisions in P. H. A., 1875, s. 180 (15), *ante*, p. 4464.

(f) This extends the powers given to the arbitrators by P. H. A., 1875, s. 180 (13), *ante*, p. 4464. Where an arbitrator in making his award deals with the costs of the award and his own personal costs, but does not mention the costs of the parties to the reference, the court will not presume that he has exercised his discretion to make no order as to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms (*Re Becker, Shillan & Co. & Barry Brothers*, [1921] 1 K. B. 391; Digest Supp.). By Arbitration Act, 1934, s. 12 (27 Halsbury's Statutes 33), the arbitrator or umpire must direct by whom the costs are to be paid.

The amount of the costs must be stated in the award, otherwise the costs of the reference and award, including the arbitrator's fees, are liable to taxation in the ordinary course (*In re Prebble and Robinson*, [1892] 2 Q. B. 602; 57 J. P. 54; 2 Digest 424, 752). Where taxation is necessary the Taxing Master may reduce the fee charged for the award (*Re Frank James & Sons*, [1903] W. N. 99; 2 Digest 425, 769). The award must not be so stated as to exclude the right of the parties to challenge the amount of the fees charged by the arbitrator for his services, as by including them in a lump sum for costs (*Re Gilbert and Wright* (1904), 68 J. P. 143; 20 T. L. R. 164; 2 Digest 424, 753). If the arbitrators are not to have power over the costs of the award they must be expressly excluded from the submission (*Re Walker and Brown* (1882), 9 Q. B. D. 434; 2 Digest 599, 2306), so also as to the costs of negotiating and preparing the submission (*Re Autothreptic Steam Boiler Co.* (1888), 21 Q. B. D. 182; 2 Digest 599, 2307). Where the parties have agreed that costs on the High Court scale shall be paid by the unsuccessful party to an arbitration and such agreement is not communicated to the arbitrator who in his award directs that each party shall pay his own costs an action to enforce the agreement will lie (*Mansfield v. Robinson*, [1928] 2 K. B. 353; 92 J. P. 126; Digest Supp.). Costs of a special case under s. 19, *ante*, p. 4792, fall under the provisions of this Schedule unless the court deals with them when the order for a special case is made (*Re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613; 57 J. P. 229; 2 Digest 459, 1056). The bill of a solicitor employed by the arbitrator in preparing the award may be taxed under s. 38 of the Solicitors Act, 1843 (18 Halsbury's Statutes 858), where the amount has been paid on taking up the award (*Re Collyer-Bristow & Co.*, [1901] 2 K. B. 839; 2 Digest 426, 770). See also generally as to taxation the judgment of FARWELL, L.J., in *Re Cannings, Ltd., and Middlesex C. C.*, [1907] 1 K. B., at p. 57; 71 J. P. 46. Where a whole cause is referred to a special referee for trial, and the referee awards that one of the parties recover against the other the costs of the action, such costs include the costs of the reference (*Patten v. West of England Iron, Timber, and Charcoal Co.*, [1894] 2 Q. B. 159; 58 J. P. 400; 2 Digest 597, 2290). As to reviewing taxation, see *Malvern U. D. C. v. Malvern Link Gas Co.* (1900), 83 L. T. 326; 2 Digest 608, 2388. As to the recovery of arbitrators' fees by action, see *Llandrindod Wells Water Co. v. Hawksley* (1904), 68 J. P. 242; 20 T. L. R. 241; 2 Digest 428, 787; *Brown v. Llandoverly Terra Cotta Co., Ltd.* (1909), 25 T. L. R. 625; 2 Digest 427, 778.

(g) This paragraph was added by the Arbitration Act, 1934, s. 7 (27 Halsbury's Statutes 31).

(h) This schedule of enactments repealed (itself repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175), included Arbitration, 1698; Civil Procedure Act, 1833, ss. 30—41; the Common Law Procedure Act, 1854, ss. 3—17 (13 Halsbury's Statutes 176—179); the Supreme Court of Judicature Act, 1873, ss. 56 (part), 57, 58, 59; the Supreme Court of Judicature Act, 1884, ss. 9—11.

Section 1.

THE PUBLIC BODIES CORRUPT PRACTICES
ACT, 1889.

(52 & 53 VICT. c. 69 (a).)

An Act for the more effectual Prevention and Punishment of Bribery and Corruption of and by Members, Officers, or Servants of Corporations, Councils, Boards, Commissions, or other Public Bodies.

[30th August 1889.]

Whereas it is expedient more effectually to provide for the prevention and punishment of bribery and corruption of and by members, officers, or servants of corporations, councils, boards, commissions, and other public bodies :

(a) This Act with the Prevention of Corruption Act, 1906, *post*, p. 5027, and the Prevention of Corruption Act, 1916, *post*, p. 5164, are to be cited together as the Prevention of Corruption Acts, 1889 to 1916.

Corruption
in office a
misdemeanor.

1.—(1) Every person who shall by himself or by or in conjunction with any other person, corruptly solicit or receive, or agree to receive (a), for himself, or for any other person, any gift, loan, fee, reward, or advantage (b) whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined (b), doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the said public body is concerned, shall be guilty of a misdemeanor (c).

(a) This sub-section applies to the person bribed or corrupted; the next deals with the person bribing. It was held not necessary on an indictment under this sub-section to prove that the accused was himself a member, officer, or servant of a public body as defined by the Act, the alleged offence being an attempt to obtain a sum of money for abstaining, or inducing other persons to abstain, from giving evidence on an application to the London County Council for a music and dancing licence (*R. v. Edwards* (1895), 59 J. P. 88).

(b) For the definition of advantage, public body, etc., see s. 7, *post*, p. 4799.

(c) This misdemeanour may be tried on indictment at quarter sessions (s. 6, *post*, p. 4799). The penalty is prescribed by s. 2.

Reference should also be made to the Prevention of Corruption Act, 1906, *post*, p. 5027, which provides for the punishment of corrupt transactions with "agents," a term which includes persons serving under any corporation or any borough, county, or district council or any board of guardians.

It should be mentioned that it is a misdemeanor at common law for a public officer, whether judicial or ministerial, to accept a bribe as an inducement to him to show favour or forbear to show disfavour to any person towards whom the impartial discharge of the officer's duty demands that he should show no favour or that he should show disfavour. It is also a misdemeanor at common law for such an officer to conspire with others that he shall receive such a bribe (*R. v. Whitaker*, [1914] 3 K. B. 1283; 79 J. P. 28; 32 Digest 136, 1002).

(2) Every person (a) who shall by himself or by or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage (b) whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer, or servant

of any public body as in this Act defined (b), doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanor (c). Section 1.

(a) The word "person" includes a body of persons, such as a firm or joint stock company. See s. 7, *post*, p. 4799.

(b) See the definition of advantage, public body, etc., in s. 7.

(c) See note (c) to the preceding sub-section.

2. Any person on conviction for offending as aforesaid shall, at the discretion of the court before which he is convicted (a)— Penalty for offences.

- (a) be liable to be imprisoned for any period not exceeding two years, with or without hard labour, or to pay a fine not exceeding five hundred pounds, or to both such imprisonment and such fine (b); and
- (b) in addition, be liable to be ordered to pay to such body (c), and in such manner as the court directs, the amount or value of any gift, loan, fee, or reward received by him or any part thereof; and
- (c) be liable to be adjudged incapable of being elected or appointed to any public office (d) for seven years from the date of his conviction, and to forfeit any such office held by him at the time of his conviction; and
- (d) in the event of a second conviction for a like offence he shall, in addition to the foregoing penalties, be liable to be adjudged to be for ever incapable of holding any public office (d), and to be incapable for seven years of being registered as an elector, or voting at an election either of members to serve in Parliament or of members of any public body, and the enactments for preventing the voting and registration of persons declared by reason of corrupt practices to be incapable of voting shall apply to a person adjudged in pursuance of this section to be incapable of voting (e); and
- (e) if such person is an officer or servant in the employ of any public body upon such conviction (f) he shall, at the discretion of the court, be liable to forfeit his right and claim to any compensation or pension to which he would otherwise have been entitled.

(a) The court will be either the court of quarter sessions (see s. 6, *post*, p. 4799), or the assizes, or Central Criminal Court. The offence is not punishable summarily.

(b) A person convicted on indictment for a misdemeanor under this Act shall, where the matter or transaction in relation to which the offence was committed was a contract or proposal for a contract with His Majesty or any government department or any public body, or a sub-contract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding three years: provided that nothing in the section in recital shall prevent the infliction in addition to penal servitude of such punishment as under the above section may be inflicted in addition to imprisonment, or prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the section or under the Act of 1906, *post*, p. 5027, already mentioned in the note to the preamble. See the Prevention of Corruption Act, 1916, s. 1, *post*, p. 5164.

(c) That is, the public body, as defined by s. 7, *post*, p. 4799, of which he is a member, an officer, or a servant.

**Note to
Section 2.**

(d) As to what is a public office, see s. 7, *post*, p. 4799. Reference might be made to the case of the *West Ham Guardians and Officials*, where orders were made under clauses (c) and (d) of this section (71 J. P. N. 245).

(e) By the Corrupt and Illegal Practices Prevention Act, 1883, s. 37, *ante*, p. 4692, every person who, in consequence of conviction, or of the report of an election court under that Act, or the Municipal Corporations Act, 1882, Part IV., *ante*, p. 4626, or under any other Act for the time being in force, relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void. By s. 39 of the Act the registration officer (*i.e.*, the clerk of the county council or town clerk) in every county and borough is required annually to make out a list of persons disqualified to vote by reason of corrupt practices. By the Representation of the People Act, 1918, Sched. I., r. 8, *post*, p. 5179, he is required to publish such list. By the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, s. 24, *ante*, p. 4682, the town clerk of every municipal borough is required annually, in July, to make out a list of persons disqualified by corrupt practices to vote at a municipal election in the borough, and to send a copy to the overseers of every parish in the borough, and the overseers must omit the names of the persons named therein from the Burgess list. Overseers were abolished by the R. and V. A., 1925, s. 62, *ante*, p. 2222. Their duties in regard to the Electors' Register are now transferred to the rating authority, who may be called upon by the registration officer to designate officers for the purpose of performing these duties (Overseers Order, 1927, S. R. and O., 1927, No. 55, Art. 3). It seems to follow from the text that the lists prepared by clerks of the peace and town clerks under these enactments must include the names of all persons convicted under this Act.

(f) This consequence will apparently follow, whether the conviction is for a first or a subsequent conviction.

Savings.

3.—(1) *Where an offence under this Act is also punishable under any other enactment, or at common law, such offence may be prosecuted and punished either under this Act, or under the other enactment, or at common law, but so that no person shall be punished twice for the same offence.*

Repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175). See the Interpretation Act, 1889, s. 33; 18 Halsbury's Statutes 1004.

It appears from Com. Dig. "Officer (N.)," that all officers, whether such by the common law, or made pursuant to statute, are punishable for corruption or oppressive proceedings, according to the nature and heinousness of the offence, either by indictment, attachment, action at the suit of the party injured, loss of their offices, etc. It is also stated that bribery of an officer is punishable at common law by fine and imprisonment. It is unlikely, however, that any offence within the terms of this Act will be dealt with otherwise than as herein provided.

See also the Prevention of Corruption Act, 1906, referred to in note (c) to s. 1, *ante*, p. 4796.

(2) A person shall not be exempt from punishment under this Act by reason of the invalidity of the appointment or election of a person to a public office.

In other words, the Act applies to the corrupt acts of members, officers, or servants who are such de facto, though the validity of their election or appointment may be open to question.

**Restriction
on prosecu-
tion.**

4.—(1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General.

It is entirely in the discretion of the Attorney-General to grant or refuse his consent (see *Ex parte Hurter* (1883), 47 J. P. 724; 15 Cox, C. C. 166; 32 Digest 202, 2520).

(2) In this section the expression "Attorney-General" means the Attorney or Solicitor General for England, and as respects Scotland

means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor General for Ireland. Section 4.

5. *The expenses of the prosecution of an offence against this Act shall be defrayed in like manner as in the case of a felony.* Expenses of prosecution.

See now the Costs in Criminal Cases Act, 1908 (4 Halsbury's Statutes 739), which repealed this section.

6. A court of general or quarter sessions shall in England have jurisdiction to inquire of, hear, and determine an offence under this Act. Jurisdiction of quarter sessions.

It seems doubtful whether any such provision was necessary to give jurisdiction to quarter sessions. The general rule with regard to indictable offences newly created by statute, is that quarter sessions have jurisdiction unless it is otherwise expressly provided (Archbold's Quarter Sessions, 6th ed., p. 462; Com. Dig. Justices of Peace, B. (3); and see *R. v. Cock* (1815), 4 M. & S. 71; 15 Digest 724, 7837). It should be observed, however, that quarter sessions have no jurisdiction with regard to offences under the Act of 1906. See s. 2 (5) of that Act, *post*, p. 5028.

7. In this Act—

The expression "public body" means any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government, or the public health, or to poor law or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body as above defined existing elsewhere than in the United Kingdom (a): Interpretation.

The expression "public office" means any office or employment of a person as a member, officer, or servant of such public body:

The expression "person" includes a body of persons, corporate or unincorporate:

The expression "advantage" includes any office or dignity, and any forbearance to demand any money or money's worth or valuable thing, and includes any aid, vote, consent, or influence, or pretended aid, vote, consent, or influence, and also includes any promise or procurement of or agreement or endeavour to procure, or the holding out of any expectation of any gift, loan, fee, reward, or advantage, as before defined.

(a) This definition includes all sanitary authorities, urban and rural. The Act of 1916, s. 4 (2), *post*, p. 5165, provides that the expression "public body" shall include, in addition to the bodies mentioned in the above section, local and public authorities of all descriptions.

8. [Scotland.]

9. [Ireland.]

10. This Act may be cited as the Public Bodies Corrupt Practices Act, 1889. Short title.

Section 1.

THE WORKING CLASSES DWELLINGS ACT, 1890.

(53 & 54 VICT. c. 16.)

An Act to facilitate Gifts of Land for Dwellings for the Working Classes in Populous Places.
[25th July, 1890.]

Exemption
from 51 & 52
Vict. c. 42,
Parts I., II.,
and 7 & 8 Vict.
c. 97, s. 16, of
gifts for working
classes
dwellings.

1. Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, . . . shall not apply to any assurance, by deed, or will, of land, or of personal estate to be laid out in land, for the purpose of providing dwellings for the working classes in any populous place (a).

Provided as follows :

- (i) The quantity of land which may be assured by will under this section shall not exceed five acres ; and
- (ii) The deed or will containing the assurance must, within six months, in the case of a deed after the execution thereof, or in the case of a will after the probate thereof, be enrolled in the books of the Charity Commissioners, if the land is situate in England or Wales . . .

For the purposes of this Act, the expression "populous place" means the administrative county of London, any municipal borough, any urban sanitary district, and any other place having a dense population of an urban character (b).

(a) Words relating to Ireland only are omitted from this section. But for this provision land could not have been conveyed, nor could money to be laid out in land have been assured by deed or will for the purpose of working classes dwellings. The above Act creates an exception similar to those created under Part III. of the Mortmain and Charitable Uses Act, 1888, *ante*, p. 4774; *cf.* also the Housing Act, 1936, s. 150, and the Town and Country Planning Act, 1932, *ante*, pp. 1745, 1879. But apparently this is not an Act with charity matters (*Re Sutton, Lewis v. Sutton*, [1901] 2 Ch. 640 ; 66 J. P. 39 ; 8 Digest 274, 420).

(b) The expression "populous place" may include a part of a rural district which is thickly populated.

Application of
Act.

2. This Act shall extend to any assurance by deed made within twelve months before the passing of this Act by a person alive at that passing as if it had been made after the passing, except that the assurance shall be enrolled or registered as aforesaid within six months after the passing of this Act.

Short title and
construction.

3.—(1) This Act may be cited as the Working Classes Dwellings Act, 1890.

(2) Expressions used in this Act shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888 (a).

51 & 52 Vict.
c. 42.

(a) See s. 10 of that Act, *ante*, p. 4775, which contains definitions of the terms "assurance," "will," and "land."

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1890.

(53 & 54 VICT. c. 59.)

An Act to amend the Public Health Acts.

[18th August 1890.]

PART I.

GENERAL.

1. This Act is divided into Parts as follows :

Part I.—General.

Part II.—Telegraph, etc. wires.

Part III.—Sanitary and other provisions.

Part IV.—Music and dancing.

Part V.—Stock.

Division of
Act into
Parts.

2.—(1) This Act shall be construed as one with the Public Health Acts (a).

Short title,
construction
and extent
of Act.

(2) Part One of this Act shall extend to England and Wales and Ireland, exclusive of the administrative county of London. Parts Two, Three, Four, and Five shall extend to any district in which they are respectively adopted under the provisions of this Act (b).

(3) This Act may be cited as the Public Health Acts Amendment Act, 1890, and this Act and the Public Health Acts may be cited together as the Public Health Acts (a).

(a) There is no definition in this Act of the expression "Public Health Acts" so far as it relates to England and Wales. There is, however, a definition in the Short Titles Act, 1896 (18 Halsbury's Statutes 1021), and see the list in the P. H. (Buildings in Streets) Act, 1888, s. 1, *ante*, p. 4777.

As to the effect of the provision that the Act shall be construed as one with earlier Acts, see *Read v. Joannon* (1890), 25 Q. B. D., *per* COLERIDGE, C.J., at p. 304; *Charing Cross Electricity Supply Co. v. Hydraulic Power Co.*, [1914] 3 K. B. *per* Lord SUMNER, at p. 782; 78 J. P. at p. 308; 42 Digest 666, 769; *R. v. Essex J.J.*, *Ex parte Barking Town U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345; *Hart v. Hudson Brothers, Ltd.*, [1928] 2 K. B. 629; 92 J. P. 170.

(b) The adoption of these parts of the Act is provided for by the next section. Sections 39, 40 and 43, *post*, pp. 4814, 4815, 4817, are applied to county councils by the L. G. A., 1929, Sched. I., Vol. V. and 10 Halsbury's Statutes 975, and functions under those sections can only be exercised in relation to "county roads" by the councils of districts, in which they are in force, with the consent of the county council.

3. The following provisions shall have effect with regard to the adoption of the Parts of this Act, which are adoptive, by local authorities :

Adoption of
Act by local
authorities.

(1) An urban authority may adopt all or any of such Parts (a).

(2) . . . (b).

(a) Notice that the whole of a Part must be adopted so far as it is applicable. Particular sections cannot be adopted to the exclusion of the others. If, however, a rural council desire to obtain the powers of one or more sections of Part III, without putting into operation other provisions contained in that Part, or require the additional powers for part of their district only, they can apply to the Minister of Health for an order under s. 5, *post*, p. 4803. By such an order a rural council may also obtain powers under sections comprised in other parts of the Act, but all powers ordinarily appropriate to rural districts have now been generally applied (see *post*).

**Note to
Section 3.**

Where at the time of the formation of part of a rural district into an urban district certain of the adoptive Acts were in force in the rural district, a question arose as to whether the Acts would continue to be in operation in the newly formed district. The L. G. B. disclaimed authority to determine the question, but stated that it appeared to them to be desirable that fresh proceedings for the adoption of the Acts should be taken in each case. This is now generally provided for in the order for the formation of the district.

(b) Sub-s. (2) was repealed by the Food and Drugs Act, 1938, Sched. IV., *ante*, p. 1455.

(3) The adoption shall be by a resolution passed at a meeting (a) of the local authority; and one calendar month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a) Given in the mode in which notices to attend meetings of the authority are usually given; or

(b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England (b).

(a) The meeting need not be a special meeting; the resolution may be passed at an ordinary meeting so long as the special notice is given as provided by the text. See form of resolution in the *Encyclopædia of Forms and Precedents*, Vol. XII., p. 313.

(b) *Cf.* L. G. A., 1933, s. 286, and notes thereto, *ante*, p. 1168. For a form of notice, see the *Encyclopædia of Forms and Precedents*, Vol. XII., at p. 313.

(4) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed (a), and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month (b) after the first publication of the advertisement of the resolution as the authority may by the resolution fix (b), and upon its coming into operation such Parts of the Act as are adopted shall extend to that district.

(a) For a form of notice see the *Encyclopædia of Forms and Precedents*, Vol. XII., p. 314. As to the fixing of the notices on the church and chapel doors, see *infra*.

It is not quite clear that the notices need to be fixed to the doors of Nonconformist chapels. The L. G. B. has expressed the view that only Church of England chapels are referred to in this section, and it has been held under Parish Notices Act, 1837, s. 2 (6 Halsbury's Statutes 122), which requires notices of vestry meetings to be affixed "on or near the door of all the churches and chapels within such parish or place," that such notices need not be affixed to churches or chapels other than those of the Church of England (*Ormerod v. Chadwick* (1847), 16 M. & W. 367; 11 J. P. 138; 19 Digest 252, 362; *R. v. Warblington Overseers* (1854), 18 J. P. 647; 18 Jur. 494; 38 Digest 578, 1137; *R. v. Whipp* (1843), 4 Q. B. 141; 7 J. P. 656; 38 Digest 584, 1173; *Edwards and Mann v. Hatton* (1866), L. R. 1 A. & E. 21; 30 J. P. 211; *R. v. Wolferstan*, [1893] 2 Q. B. 451; 58 J. P. 133; 38 Digest 593, 1233). Compare

Note to
Section 3.

the provisions in Parliamentary Voters' Registration Act, 1843, s. 23, where there is express mention of chapels not belonging to the Established Church.

(b) The L. G. B. expressed the view that where the resolution does not fix a definite date on which it shall come into operation the validity of the resolution is very doubtful, and in such cases they have suggested that proceedings for adoption shall be begun afresh. The Board did not consider that the date when the resolution for the adoption is to come into force can be fixed by a resolution of the council passed at a later meeting.

The expression "one month" means "one calendar month" (see the Interpretation Act, 1889, s. 3; 18 Halsbury's Statutes 993). In a case where a resolution was fixed to come into operation at a time equivalent to four weeks from its first advertisement, the L. G. B. expressed the opinion that proceedings should be commenced afresh.

(5) A copy of the resolution shall be sent—

- (a) Where any Part of the Act is adopted, to the Local Government Board;
- (b) Where Part Two is adopted, to the Board of Trade;
- (c) Where Part Four is adopted, to a Secretary of State.

In any case a copy must be sent to the L. G. B., now the Minister of Health. When Part II. is adopted a copy must also be sent to the Minister of Transport, who has succeeded the Bd. of T. under Part II. (Telegraph, etc., wires). And for a similar reason, when Part IV. is adopted, a copy must also be sent to the Secretary of State.

(6) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

4. [*Expenses of local authority.*] [*Repealed by the L. G. A. 1933, s. 307, Sched. XI., Pt. IV., ante, pp. 1194, 1284.*]

5. The Local Government Board may declare that any of the provisions contained in any Part of this Act which are not in force in any rural sanitary district (a) shall be in force in that district, or any part thereof, and may invest a rural sanitary authority with any of the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of any Part of this Act, in like manner, and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875, and in such case the date of the declaration of the Local Government Board under this section shall be substituted for the date of the adoption of this Act or any Part thereof (b).

Power to
Local
Government
Board to
extend
particular
provisions to
rural
districts.

(a) The provisions of this Act, which are not in force in, and which cannot be adopted in, a rural district, are those contained in Parts II., IV., and V., and those sections and parts of sections in Part III. which were not mentioned in the former s. 50 (now repealed; 13 Halsbury's Statutes 842).

(b) See s. 276 of the P. H. A., 1875, *ante*, p. 4502, and notes thereto.

The effect of this section, as incorporated by the text, is to enable a rural sanitary authority (now rural district council), or ratepayers whose assessments are equal to one-tenth of the rateable value of the district or contributory place, to apply to the L. G. B., now the Minister of Health, for an Order investing the rural authority with powers under the Act. The Order must be published in the London Gazette.

**Note to
Section 5.**

Under the L. G. A., 1894, s. 25, *post*, p. 4905, application may also be made by a parish council or county council (for urban powers to be conferred upon a rural district council).

The practice of the Minister of Health in regard to applications for powers under the present Act for rural parishes is explained in many cases in the notes to the various sections.

A difficulty occurs in many cases in the matter of the incidence of expenses. The M. of H. has frequently inserted a provision in Orders under s. 276 of the Act of 1875, *ante*, p. 4502, declaring the expenses to be incurred thereunder to be chargeable as special expenses. Such a provision cannot, however, be made in the case of Orders under s. 5 of the present Act, having in view the provisions of the latter part of s. 4 of the Act, except where an order is in force under s. 190 (3) of the L. G. A., 1933, *ante*, p. 1017.

See also note (a) to s. 3, *ante*, p. 4801.

**Legal pro-
ceedings, etc.**

6. Offences under this Act may be prosecuted, and penalties, forfeitures, costs, and expenses recovered in like manner and subject to the same provisions as offences which may be prosecuted and penalties, forfeitures, costs, and expenses which may be recovered in a summary manner under the Public Health Acts.

Offences under byelaws made under this Act may also be similarly prosecuted. See the P. H. A. Amendment A., 1907, s. 6, *post*, p. 5038.

The provisions of the P. H. A., 1875, as to the prosecution of offences and the recovery of penalties, etc., are contained in Part VII. of that Act, *ante*, p. 4481. The procedure is that prescribed by the Summary Jurisdiction Acts before a court of summary jurisdiction being a petty sessional court (s. 251). Proceedings must be taken within the period of six months after the matter of information or complaint arose (Summary Jurisdiction Act, 1884; 11 Halsbury's Statutes 355, repealing and substituting for s. 252 the corresponding provisions of the Summary Jurisdiction Acts). The proceedings can be taken only by the local authority, or a party aggrieved, or a person having the written consent of the Attorney-General (s. 253). The penalties are to be paid to the local authority, but if there is an informer he is to receive one-half (s. 254). A justice may act though he is a member of the local authority (s. 258). The local authority may appear by their clerk or any member or officer generally or specially authorised (s. 259). Demands below £50 may be recovered in the county court (s. 261). The proceedings are not to be quashed on *certiorari* (s. 262).

**Appeals to
quarter
sessions.**

7.—(1) Any person aggrieved—

- (a) By any order, judgment, determination, or requirement of a local authority under this Act;
- (b) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act;
- (c) By any conviction or order of a court of summary jurisdiction under any provision of this Act;

may appeal in manner provided by the Summary Jurisdiction Acts to a court of quarter sessions.

The expression "this Act" means not merely this Act, but includes the Public Health Acts, with which this Act is to be read as one. See s. 2, *ante*, p. 4801 (*R. v. Essex J.J., Ex parte Barking U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345; 38 Digest 224, 557. It is arguable that an appeal would therefore lie to quarter sessions against a requirement, etc., of a local authority under the P. H. A., 1875 (*e.g.*, under s. 150, *ante*, p. 4388); *cf. Pearce v. Maidenhead Corporation*, [1907] 2 K. B. 96; 71 J. P. 230; 26 Digest 545, 2432; see also *Hart v. Hudson Bros., Ltd.*, [1928] 2 K. B. 629; 92 J. P. 170; 44 Digest 133, 26. In view of the proviso contained in sub-s. (2) of this section, however, it would appear to be more appropriate to base such

**Note to
Section 7.**

a right of appeal upon s. 7 of the P. H. A. Amendment A., 1907, *post*, p. 5039, and *R. v. Recorder of Belfast*, cited in the notes thereto.

This general provision is subject to the qualification contained in the next sub-section. The cases in which an appeal will lie under this provision are indicated in the notes to the several sections. The existence of a right of appeal against the order, etc., of a local authority will not affect the duty of that authority to hear judicially the application for such order. As to this duty, see *R. v. London C. C.*, [1918] 1 K. B. 68; 36 Digest 250, 32.

The provisions of the Summary Jurisdiction Acts as to appeals to quarter sessions are contained in Summary Jurisdiction Act, 1879, s. 31, set out in the notes to s. 301 of the P. H. A., 1936, *ante*, p. 627. In cases where a right of appeal to quarter sessions already existed under earlier Acts, a question may arise whether the procedure prescribed under those Acts is repealed by the substitution of the procedure under the Summary Jurisdiction Acts. See *Edelsten v. London C. C.*, [1918] 1 K. B. 81; 81 J. P. 294; 33 Digest 315, 326.

A regulation was made under s. 4 of the London Hackney Carriages Act, 1850 (19 Halsbury's Statutes 143), which does not provide any penalty for breach of a regulation so made. The London Hackney Carriage Act, 1853, provides by s. 19 (*op. cit.* 149) that for every offence against the provisions of that Act, for which no special penalty is appointed, the offender shall be liable to a penalty of 40s., and by s. 21 (*op. cit.* 150) that the Act is to be construed as one with the London Hackney Carriages Acts, 1843, 1850 (*op. cit.* 125, 142). It was held, that the effect of ss. 19 and 21 was to create one code of law for the regulation of hackney carriages; that s. 21 was a general penalty section which would apply to a breach of any provision of the three Acts which was not specifically provided for elsewhere; and that a breach of a regulation made under an Act was a breach of the Act itself (*Willingale v. Norris*, [1909] 1 K. B. 57; 72 J. P. 495; 42 Digest 780, 2105).

In *Hornsey Corporation v. Kershaw* (1909), 73 J. P. 335; 41 Digest 39, 283, a court of quarter sessions held that a local authority could appeal where justices refused an order for payment of expenses incurred by the authority in repairing an alleged "single private drain" (under the former s. 19, now repealed; 13 Halsbury's Statutes 831).

(2) This section shall not apply in cases where there is an appeal to the Local Government Board under section two hundred and sixty-eight of the Public Health Act, 1875.

See s. 268 of the P. H. A., 1875, and the notes thereto, *ante*, p. 4495. For the L. G. B. must now be read the Minister of Health.

It is not clear whether this sub-section bars an appeal to quarter sessions against an order of justices by a defendant who might at an earlier stage have appealed under s. 268 to the L. G. B. against the "decision" of the authority; but *semble* it does. If so, it is still less clear whether in such a case it bars an appeal by the authority. The point does not seem to have been raised in *Hornsey Corporation v. Kershaw*, *supra*.

8. Any information, complaint, warrant, or summons made or issued for the purposes of this Act, or of the Public Health Acts, may contain in the body thereof or in a schedule thereto several sums. More than one sum in one summons, etc.

It is difficult to suggest what is the object of this provision, or what its effect is. The general rule is that an information or complaint must be confined to one offence or matter of complaint (see Summary Jurisdiction Act, 1848, s. 10; 11 Halsbury's Statutes 277). Under the above provision one complaint and summons may be used for the recovery of several sums. It would appear to have no application to the case of penalties.

9. All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875, and any enactment amending or extending those sections, shall apply to all byelaws from time to time made by a local authority under the powers of this Act, except byelaws made under Part Two of this Act. Byelaws.

**Note to
Section 9.**

Of the sections mentioned, only ss. 183 and 184, *ante*, pp. 4467—8, have not been repealed, and they also have been repealed except so far as may be material for the purposes of any unrepealed enactment of the P. H. A.'s or Acts directed to be construed therewith. Reference generally should be made to Pt. XII. of the L. G. A., 1933, *ante*, p. 1093.

Byelaws made under ss. 40 and 44 of this Act, *post*, pp. 4815, 4818, must be confirmed by the L. G. B., now the Minister of Health, under s. 184 of the P. H. A., 1875; byelaws under Part II. must be confirmed by the Minister of Transport, as successor to the Board of Trade (see s. 13, *post*, p. 4807).

**Powers of
Act cumu-
lative.**

10.—(1) All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed.

See the P. H. A., 1875, s. 341, *ante*, p. 4522, and *cf.* P. H. A., 1936, s. 328, *ante*, p. 673. Notwithstanding this provision, the Act itself creates certain exceptions to it. Thus, where s. 34, *post*, p. 4811, is in force, the Towns Improvement Clauses Act, 1847, s. 80, *ante*, p. 4209, is repealed. But the Act does not repeal or supersede local Acts.

(2) Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, provided that no person shall be liable to pay, except in the case of a daily penalty, more than one penalty in respect of the same offence.

The expression "daily penalty" is defined in s. 11 (3), *post*, p. 4807.

**Interpreta-
tion.**

11.—(1) [*Repealed by the P. H. A., 1936, Sched. III., Pt. II., ante*, p. 729].

(2) A street or part of a street which has been asphalted or paved with wood, tar paving, or artificial stone, or other improved paving of any kind shall be deemed to have been paved within the meaning of any provision of the Public Health Acts.

Provided that a street shall not be deemed to be paved to the satisfaction of an urban authority unless it is paved with such kind as well as with such quality of paving as the local authority shall consider suitable for the street.

The first part of this sub-section appears to have been intended to meet a dictum of JESSEL, M.R., who, in *Att.-Gen. v. Bidder* (1881), 47 J. P. 263; 26 Digest 374, 996, said that a road paved with wood was not "paved" within the meaning of s. 152 of the P. H. A., 1875, *ante*, p. 4423. See further as to this case the notes to s. 41, *post*, p. 4815.

The second part of the sub-section is an amendment of ss. 150, 152 of the P. H. A., 1875. Section 150 of that Act, *ante*, p. 4388, provides that when a street, not being a highway repairable by the inhabitants at large, is not (*inter alia*) paved to the satisfaction of the urban authority, notice may be served on the owners of property fronting the street to pave it, and in their default the urban authority may pave the street, and recover the expenses from the owners. The effect of this sub-section is that an authority may require the road to be asphalted or paved with wood, etc., and that though properly paved in one way, it shall not be deemed to be paved to the satisfaction of the authority unless they also consider the kind of paving suitable for the street. Section 152, *ante*, p. 4428, provides that when a street is (*inter alia*) paved to the satisfaction of an urban authority, they may declare it to be a highway repairable by the inhabitants at large, and by s. 82 of the P. H. A., 1925, Vol. V., *post*, they may be compelled to make such a declaration. Having regard to the text, they have now a

discretion as to the kind of paving which they deem suitable for the street. See the notes to s. 41, *post*, p. 4815.

See further on this subject the Private Street Works Act, 1892, *post*, p. 4848.

**Note to
Section 11.**
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(3) In this Act, if not inconsistent with the context (a)—

The expression “local authority” means an urban sanitary authority or a rural sanitary authority, as the case may be, under the Public Health Acts, and the expressions “urban authority” and “rural authority” mean respectively an urban sanitary authority and a rural sanitary authority under those Acts (b).

The expressions “urban sanitary district” and “rural sanitary district” mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts (b).

The expression “sanitary convenience” includes urinals, water-closets, earth-closets, privies, ashpits, and any similar convenience (c).

The expression “daily penalty” means a penalty for each day on which any offence is continued after conviction therefor (d).

The expressions “surveyor,” “lands,” “premises,” “owner,” “street,” “house,” “drain,” “sewer” have respectively the same meaning as in the Public Health Acts (e).

(a) See as to these words the cases mentioned in notes to the P. H. A., 1936, s. 343, *ante*, p. 686. In a case in the House of Lords, Lord SELBORNE said: “An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense, whenever that would be properly applicable; but to enable the word, as used in the Act, when there is nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable” (*Robinson v. Barton-Eccles L. B.* (1883), 8 App. Cas. 798; 48 J. P. 276; 26 Digest 269, 86).

(b) These expressions are defined in the P. H. A., 1875, s. 6 (13 Halsbury’s Statutes 628). See, however, the notes, *ante*, pp. 736, 765, and Part II. of the L. G. A., 1894, *post*, p. 4904.

(c) The expression “sanitary convenience” is a convenient one, including as it does a number of things which are generally grouped together in the P. H. A., 1875, *ante*, p. 4331. See, for example, ss. 43 *et seq.* of the P. H. A., 1936, *ante*, pp. 137 *et seq.* The word “ashpit” has now an extended meaning.

(d) This definition obviates a difficulty which was often felt where a daily penalty is imposed for every day an offence continued, the question being in such cases whether the daily penalty is incurred before as well as after conviction; the matter is, of course, academic so far as regards the modern P. H. A.

(e) In the P. H. A., 1875, s. 4, all these expressions are defined: see the notes to that section, *ante*, p. 4381. It is not clear that the definitions were necessary regard being had to the provision in s. 2 (1), *ante*, p. 4801, that this Act is to be read as one with the Public Health Acts.

12. [*Application to Ireland.*]

PART II.

TELEGRAPH, ETC. WIRES (a).

13.—(1) An urban authority may from time to time make, alter, and repeal byelaws (b) for prevention of danger or obstruction to the public from posts, wires, tubes, or any other apparatus stretched or placed above, over, along, or across any street (c) (whether before or after the adoption of this Part of this Act) (d) for the purpose of any telegraph, telephone, lighting, railway signalling, or other purpose (e). Byelaws for prevention of danger from telegraph wires, etc.

**Note to
Section 13.**

(a) This Part of the Act may be adopted by an urban authority. It cannot be adopted by a rural council, but it is open to such a council to apply to the Minister of Health for an order under s. 5, *ante*, p. 4803, declaring it to be operative in their district or in some part thereof. Instances will presumably be rare in which the powers are required in rural districts and the views of the Minister of Transport will probably be required in such a case. See also notes to ss. 3 and 5, *ante*, pp. 4801, 4803. When this Part is adopted by an urban authority in manner provided by s. 3, the resolution must be forwarded to the Ministry of Health, and to the Ministry of Transport, as provided by s. 3 (5), *ante*, p. 4803.

Where s. 25 of the P. H. A., 1925, Vol. V., *post*, applies, this Part of this Act will cease to have effect in the district. But any byelaws made under this Part will remain in force until revoked by a resolution of the local authority (s. 25 (4)).

Power to make byelaws for the regulation of certain wireless aërials is given by s. 26 of the P. H. A., 1925, Vol. V., *post*, in districts where that section has been adopted, and those byelaws require confirmation by the M. of H.

(b) The provisions of the Public Health Acts do not apply to these byelaws (see s. 9, *ante*, p. 4805).

The byelaws made under this section are only for the prevention of danger or obstruction to the public. The observance of them will not necessarily make it lawful to erect wires for the purposes above mentioned. The byelaws will not in any way enable the promoters of any undertaking to erect wires upon or over private property where that cannot otherwise be legally done.

(c) For the definition of "street," see s. 11 (3), and notes thereto, *ante*, p. 4807. Apart from this section or s. 25 of the P. H. A., 1925, Vol. V., *post*, a local authority have no power to prevent the suspension of overhead wires above a street unless the wires interfere with its ordinary user as a street: see cases on pp. 4378—9, *ante*, and *Lery v. National Telephone Co.* (1897), Times, Dec. 18th (wires above private house).

For disputes as to the laying or erection of telephone wires by the Postmaster-General or his licensees (mainly as to whether the lines should be overhead or underground), see *Wandsworth District Board v. P. M. G.* (1884), 4 Ry. and Can. Tr. Cas. 301; 42 Digest 892, 39; *P. M. G. v. Corporation of London* (1898), 62 J. P. 390; 78 L. T. 120; 42 Digest 892, 35; *P. M. G. v. Corporation of Glasgow* (1900), 10 Ry. and Can. Tr. Cas. 238; 42 Digest 892, 36; *P. M. G. v. Corporation of Edinburgh* (1897), 10 Ry. and Can. Tr. Cas. 247; *Tunbridge Wells Corporation v. National Telephone Co.* (1900), 64 J. P. 756; 83 L. T. 525; 42 Digest 893, 43; *In re P. M. G. and Watford U. D. C.* (1908), 72 J. P. 184; 52 Sol. Jo. 302; 42 Digest 892, 41; *In re P. M. G. and Woolwich Borough Council* (1908), 72 J. P. 186; 6 L. G. R. 509; 42 Digest 893, 42; *Re P. M. G. and Tottenham U. D. C.* (1910), 74 J. P. 434; 8 L. G. R. 791; 42 Digest 893, 46; *Croydon Corporation v. P. M. G.* (1910), 74 J. P. 424; 8 L. G. R. 1005; 42 Digest 893, 45; *P. M. G. v. Hendon U. D. C.*, [1914] 1 K. B. 564; 78 J. P. 145; 42 Digest 888, 19; *Dublin C. C. v. P. M. G.*, [1914] 2 I. R. 208; *P. M. G. v. Hutchings*, [1916] 1 K. B. 774; 80 J. P. 246; 42 Digest 892, 38, and county court cases at 77 J. P. N. 412, 605. *Cf.* the Telegraph (Arbitration) Act, 1909 (19 Halsbury's Statutes 295).

As to wires above recreation grounds, see the Telegraph (Construction) Act, 1908, s. 3 (*op. cit.* 293).

(d) The byelaws will apply to wires already erected as well as to those erected after the adoption of this Part of the Act; see, however, sub-s. (6), *post*, p. 4809.

(e) See the partial exemption of apparatus belonging to a railway or canal company in sub-s. (7), *post*, p. 4809.

The byelaws will not apply to post office wires, or electric lighting wires erected under the Electric Lighting Acts (see s. 15, *post*, p. 4810, and the notes thereto).

(2) By such byelaws provisions may be made for the inspection and examination by the urban authority of any such posts, wires, tubes, or other apparatus, and for the prohibition of any such posts, wires, tubes, or other apparatus being or continuing to be stretched or placed as aforesaid in such manner as to be dangerous or to cause obstruction to the public.

(3) Offenders against such byelaws shall be liable to such penalties as may be thereby prescribed not exceeding five pounds for each offence, and a daily penalty not exceeding forty shillings, and the court in addition to awarding any penalty may order the removal of any post, wire, tube, or other apparatus stretched or placed in contravention of any such byelaw made under this section. Section 13.
—

The byelaws must themselves prescribe the penalties. For the definition of a daily penalty, see s. 11 (3), *ante*, p. 4807. The proceedings will be under the Summary Jurisdiction Acts, and an appeal against a conviction or order will lie to quarter sessions under s. 7 (1), *ante*, p. 4804.

(4) Byelaws made under this section and any alteration or repeal of any such byelaw shall not take effect unless and until they have been submitted to and confirmed by the Board of Trade, which Board is hereby empowered to allow or disallow or to modify or amend the same as it may think proper.

The powers of the Board of Trade have been transferred to the Minister of Transport. The form of byelaws generally approved by the Minister under this section will be found in Shiers Will's Law relating to Electric Lighting and Energy. One of the chief causes of danger is the liability of the wires to be blown down or broken by snow; these byelaws provide for such a cause of danger.

(5) Reasonable notice of the intended submission for confirmation of any such byelaw, alteration, or repeal shall be given by the urban authority by advertisement in one or more local newspapers circulating in the district to which such byelaws relate, and by circular letter to any company or person owning or leasing any post, wire, tube, or other apparatus to which any byelaw is intended to apply, and such company or person shall be entitled to appear before the Board of Trade and object to the confirmation, alteration, or repeal of any byelaw, and all costs incurred by any parties in reference to the application for or objection to the confirmation, alteration, or repeal of any such byelaw shall be in the discretion of the Board of Trade.

See note to sub-s. (4), *supra*.

The circular letter must be sent to all owners or lessees of existing posts, wires, etc., other than those mentioned in s. 15, *post*, p. 4810. Such owners and lessees will send in their objections, if any, and may appear before the Minister of Transport in support of them.

(6) The Board of Trade may exempt from the operation of any such byelaw, alteration, or repeal, for such period as they think proper, not exceeding five years from the confirmation thereof, any post, wire, tube, or other apparatus which shall have been stretched or placed, in the case of a new byelaw, before the confirmation thereof, and in the case of the alteration or repeal of a byelaw, in accordance with such byelaw.

See note to sub-s. (4), *supra*.

Unless such exemption is made, the byelaws will extend to existing wires as well as to those to be erected after the adoption of this Part of the Act.

(7) Nothing in such byelaws shall extend to or include any apparatus belonging to any railway or canal company, or used by them in connection with their business, and which now is or hereafter shall be fixed or placed by any such company across, over, or along any railway or the towing-path of any canal, provided such apparatus do

Section 13. not project or be not stretched or placed beyond such railway or towing-path over any street, or be not stretched or placed over any street crossing over such railway other than streets crossing any railway on the level.

When a railway crosses above a street, the byelaws will not apply to wires on such railway so long as these do not project beyond the property of the company. Where the street is carried over the railway, the byelaws will not apply to railway wires unless these are carried above the street. When a street crosses a railway on the level, the byelaws will not apply to the railway wires even if they do cross the street.

Danger from
exempted
telegraph
wires.

14.—(1) If any post, wire, tube, or other apparatus so exempted as aforesaid (a) is during the period of such exemption in the opinion of the surveyor of the urban authority in such a state or position that immediate danger to any person is to be apprehended (b), he may give information to any justice, who may thereupon summon the owner or lessee thereof or other person interested therein forthwith to appear before a court of summary jurisdiction.

(a) The exemptions here referred to are those mentioned in sub-ss. (6), (7), of the preceding section.

(b) This does not necessarily mean when danger is apprehended to a particular person. This section will apply if immediate danger is apprehended to any person passing along a street.

(2) The court may thereupon—

(a) Make an order requiring such owner, lessee, or other person, or all or any of them, to remove or remedy the source of danger; or

(b) Make an order authorising the surveyor to do so at the expense of such owner, lessee, or other person, or of all or any of them; or

(c) Make such other order as may appear to the court under all the circumstances of the case to be necessary and proper.

An appeal against such an order will lie to quarter sessions under s. 7, *ante*, p. 4804. The expense incurred under clause (b) will apparently be recoverable summarily (see s. 6, *ante*, p. 4804).

Savings.

15.—(1) Nothing contained in this Part of this Act shall—

(a) Extend to any post, wire, tube, or other apparatus or property of the Postmaster-General:

(b) Extend to any works of any undertakers within the meaning of the Electric Lighting Acts, 1882 to 1888, to which the provisions of those Acts apply.

The Electric Lighting Acts, 1882–1919, which are set out in this Volume, contain important restrictions with regard to the erection of overhead wires: see s. 14 of the Act of 1882, *ante*, p. 4652, s. 4 of the Act of 1888, *ante*, p. 4702, and ss. 21 and 22 of the Act of 1919, *post*, pp. 5255–6, and the regulations made under these Acts.

The Electricity (Supply) Act, 1919, s. 21, provides that where the consent of the Minister of Transport is obtained to the placing of any electrical line above ground in any case, the consent of the local authority shall not be required, but the Minister of Transport before giving his consent shall give the local authority an opportunity of being heard. See the section *in extenso*, *post*, p. 5256. See also ss. 18 and 44 of the Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 806, 818.

(2) Nothing contained in this Part of this Act shall limit or interfere with the working of any mines or minerals lying under or adjacent to

any street along or across which any posts, wires, tubes, or other apparatus shall be stretched or placed, nor shall the owner, lessee, or occupier of those mines or minerals be liable for any damage which may be occasioned by the working thereof in the ordinary course to such posts, wires, tubes, or apparatus. Section 15.
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As to the right of an owner to work minerals under a street vested in the urban authority, see s. 27 of the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 4611. The object of the above provision appears to be to prevent the owners of posts, wires, etc., erected in compliance with the byelaws from acquiring any right thereby against the owner of mines or minerals under the street in or over which the posts, wires, etc., are placed. It may be doubted whether the provision was required.

PART III.

SANITARY AND OTHER PROVISIONS (a).

Ss. 16—33, 36, 47—50 and 52 (13 Halsbury's Statutes 830—837, 838, 842, 845) have been repealed; and all the remaining sections in this Part of the Act, except ss. 37, 41 and 51, *post*, pp. 4813, 4815, 4819, have been applied to rural councils by Order of the M. of H. (R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267).

(a) This part of the Act may be adopted in its entirety by an urban authority. It could only be adopted by a rural authority to the extent mentioned in the former s. 50 (now repealed), but so far as unrepealed it has now been generally applied to them by Order (see *supra*). See also note (a) to s. 3, *ante*, p. 4801.

* * * * *

34.—(1) Every person intending to build or take down any building or to alter or repair the outward part of any building in any street or court (a), shall—

- (a) before beginning the same, unless the urban authority otherwise consent in writing, cause close-boarded hoards or fences to the satisfaction of the urban authority to be put up in order to separate the building from the street or court; Hoards to be set up during progress of buildings, etc.
- (b) if the urban authority so require, make a convenient covered platform and handrail to serve as a footway for passengers outside of such hoard or fence;
- (c) continue such hoard or fence with such platform and handrail as aforesaid standing and in good condition to the satisfaction of the urban authority during such time as they may require;
- (d) if required by the urban authority, cause the same to be sufficiently lighted during the night;
- (e) remove the same when required by the urban authority (b).

This section was applied to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, see *ante*, p. 3267, made under s. 5, *ante*, p. 4803.

(a) For the definition of "street," see *ante*, p. 4836. The term "street" includes "court" if it has the meaning assigned to it in the interpretation clause. The use of the latter expression seems to imply that the word "street" is here used in its ordinary popular sense of a road with houses on one or both sides.

(b) When the provisions of this section are adopted they are to be in substitution (see sub-s. (3), *infra*) for those of the Towns Improvement Clauses Act, 1847, s. 80, *ante*, p. 4209, which is incorporated with the P. H. A., 1875, by *ibid.*, s. 160, *ante*, p. 4443. The Act of 1847, s. 80, is set out, *ante*, p. 4209. See cases in notes thereto.

**Note to
Section 34.**
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See also the P. H. A. Amendment A., 1907, s. 32, *post*, p. 5052, as to the erection of hoards.

As to the applicability of this section to schools, *cf. Higgs and Hill, Ltd. v. Stepney Borough Council*, p. 194, *ante*.

(2) Every person who fails to comply with any of the provisions of this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

As to the recovery of these penalties, see s. 6, *ante*, p. 4804. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 4804. For the definition of a "daily penalty," see s. 11 (3), *ante*, p. 4807.

(3) Where this Part of this Act is adopted the eightieth section of the Towns Improvement Clauses Act, 1847, shall be repealed, and this section shall be deemed to be substituted therefor.

The Towns Improvement Clauses Act, 1847, s. 80, is set out, *ante*, p. 4209.

As to repair
of cellars
under streets.

35.—(1) All vaults, arches, and cellars under any street (a), and all openings into such vaults, arches, or cellars in the surface of any street, and all cellar-heads, gratings, lights, and coal-holes in the surface of any street, and all landings, flags, or stones of the path or street supporting the same respectively, shall be kept in good condition and repair by the owners or occupiers of the same, or of the houses or buildings to which the same respectively belong (b).

This section has been put in force in rural districts by the R. D. C.'s (Urban Powers) Order, 1931 (S. R. & O., 1931, No. 580), but the exercise of powers thereunder is subject to the consent of the county council.

(a) For the definition of "street," see *ante*, p. 4336.

(b) This provision was entirely new. By s. 73 of the Towns Improvement Clauses Act, 1847, *ante*, p. 4206, as amended by the P. H. A., 1875, s. 160, *ante*, p. 4443, when any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier or owner of such vault or cellar, of iron or such other materials and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty not exceeding five pounds.

In the metropolis, though owners are required by the Metropolis Management Act, 1855, s. 102 (11 Halsbury's Statutes 909), to keep in repair arches, vaults, and cellars under any street, it was held that the vestry, as highway surveyors, were bound to repair the pavement over vaults or cellars (*Hamilton v. St. George, Hanover Square* (1873), L. R. 9 Q. B. 42; 38 J. P. 405; 26 Digest 375, 1004; and *cf. Laing v. Paull and Williamsons*, [1912] S. C. 196). Under the provision in the text the owners or occupiers will be liable to repair not only the vaults or cellars and the cellar-heads, gratings, etc., but also the landings, flags, or stones supporting such cellar-heads, etc.

As to the liability of an owner of premises for the negligence of a contractor in regard to the use of a cellar flap, see *Wilson v. Hodgson's Kingston Brewery Co., Ltd.* (1915), 80 J. P. 39; 26 Digest 418, 1368.

(2) Where any default is made in complying with the provisions of this section, the urban authority may, after twenty-four hours' notice in that behalf (a), cause anything in respect of which such default is made to be repaired or put into good condition, and the expenses of so doing shall be paid to the urban authority by such owner or occupier respectively, or in default may be recovered in a summary manner (b).

(a) This notice should be authenticated by the signature of the clerk or surveyor (see the P. H. A., 1875, s. 266, *ante*, p. 4494).

(b) As to the recovery of these expenses, see s. 6, *ante*, p. 4804. As to appeal, see s. 7, *ante*, p. 4804.

**Note to
Section 35.**

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37.—(1) Whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting, or other like occasion, every roof of a building, and every platform, balcony, or other structure or part thereof let or used or intended to be let or used for the purpose of affording sitting or standing accommodation for a number of persons, shall be safely constructed or secured to the satisfaction of the surveyor of the urban authority.

Safety of
platforms,
etc., erected
or used on
public
occasions.

This section, not being mentioned in s. 50 (13 Halsbury's Statutes 842), can only be put in force in a rural district by an Order of the Minister of Health under s. 5, *ante*, p. 4803. It is one of the two unrepealed sections in this part of the Act which have not been generally so applied.

The section applies to permanent as well as to temporary structures let or used for the accommodation of persons witnessing the show, etc. It will apply apparently to stands on racecourses.

It seems to be implied that a previous expression of satisfaction by the surveyor is not necessary, but it will be prudent in every case to obtain it.

A man who causes a building to be erected for viewing a public exhibition, and admits persons on payment of money to a seat in the building, impliedly undertakes that due care has been exercised in the erection, and that the building is reasonably fit for the purpose; and it is immaterial whether the money is to be appropriated to his own use or not (*Francis v. Cockrell* (1870), L. R. 5 Q. B. 501; 34 Digest 166, 1296). The principle of this decision was explained and applied in *Maclean v. Segar*, [1917] 2 K. B. 325; 36 Digest 123, 817, and in *Brannigen v. Harrington* (1921), 37 T. L. R. 349; 36 Digest 43, 260.

(2) Any person who uses or allows to be used, in contravention of this section, any roof of a building, platform, balcony, or structure not so safely constructed or secured, or who neglects to comply with the provisions of this section in respect thereof, shall be liable to a penalty not exceeding fifty pounds.

It does not appear what are "the provisions of this section in respect thereof." This clause seems to be unnecessary, as the mere user of a roof, etc., which is not safely constructed or secured to the satisfaction of the surveyor, renders the person using it liable to the penalty.

As to the recovery of the penalty, see s. 6, *ante*, p. 4804. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 4804.

38. An urban authority may make byelaws for the prevention of danger from whirligigs and swings when such whirligigs and swings are driven by steam power, and from the use of firearms in shooting ranges and galleries.

Byelaws for
prevention
of danger
from
whirligigs,
shooting
galleries, etc.

This section was applied generally to rural districts by the Rural District Councils (Urban Powers) Order, 1931 of the Minister of Health under s. 5, *ante*, p. 4803. In rural districts it may also be possible to deal with steam roundabouts under s. 70 of the Highway Act, 1835 (9 Halsbury's Statutes 85); see 41 Sol. J. 754.

As to the making, etc., of these byelaws, see s. 9, *ante*, p. 4805. A town council could also formerly deal with these same matters by byelaws under the Municipal Corporations Act, 1882, s. 23 (10 Halsbury's Statutes 584): see *Teale v. Harris* (1896), 60 J. P. 744; 38 Digest 159, 67. See also as to byelaws under local Acts, *Southend-on-Sea Corporation v. Davis* (1900), 16 T. L. R. 167.

The byelaws as to buildings will not apply to erections of the kind mentioned in the section: see *Hall v. Smallpiece*, and other cases cited therewith on pp. 198, 690, *ante*, but see now the P. H. A., 1936, s. 344, *ante*, p. 717, also there referred to.

**Note to
Section 38.**

A local authority made under the Public Health (Ireland) Act, a byelaw that no person should cause or suffer any whirlingig or swing to be set in motion or driven on any land immediately adjoining or abutting upon any street or road within the district unless such whirlingig or swing was placed at a distance of not less than twenty yards from any road or street, and separated from any street or road by a wall not less than fourteen inches in thickness and carried up to a height of not less than four feet above the level of the street or road. It was held that the byelaw was unreasonable and void, inasmuch as it required a structure of a permanent character involving large expense to provide against a temporary danger, which could as effectively be provided against by a temporary structure (*Enniscorthy U. D. C. v. Field*, [1904] 2 I. R. 518).

Refuges, etc.
in streets.

39. An urban authority may from time to time place, maintain, alter, and remove in any street (a), being a highway repairable by the inhabitants at large (b), such raised paving or places of refuge, with such pillars, rails, or other fences, either permanent or temporary, as they may think fit. for the purpose of protecting passengers and traffic, either along the street or on the footways, from injury, danger, or annoyance, or for the purpose of making the crossing of any street less dangerous to passengers (c).

This section was applied generally to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Ministry of Health under s. 5, *ante*, p. 4803. The exercise of powers thereunder is, however, in the case of rural districts made subject to the consent of the county council.

The section and ss. 40 and 42, *post*, are by Sched. I. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975, applied to county councils in respect of all streets in rural districts and in respect of "county roads" (as defined by L. G. A., 1929, s. 29 (1), Vol. V. and 10 Halsbury's Statutes 903) in urban districts. Rural district councils, if the sections have been put in force in their district by an Order, can function under the sections only with the consent of the county council (s. 30 (3), Vol. V. and 10 Halsbury's Statutes 904), and this consent will also be necessary before the council of an urban district which has adopted the sections can function under the sections in relation to a "county road" (s. 31 (5), Vol. V. and 10 Halsbury's Statutes 906).

Further powers as to refuges and subways are conferred by the Road Traffic Act, 1930, s. 55 (Vol. V. and 23 Halsbury's Statutes 652).

Functions under this section are not exercisable by a district council by reason of any delegation under L. G. A., 1929, s. 35, Vol. V. and 10 Halsbury's Statutes 910, since the section is not included in either Pt. I. or Pt. III. of Sched. I., Vol. V. and 10 Halsbury's Statutes 975, 977. See note to s. 36, Vol. V. and 10 Halsbury's Statutes 911. The functions may, however, be delegated under s. 274 of L. G. A., 1933, *ante*, p. 1154.

(a) See the definition of "street," *ante*, p. 4336.

(b) On these words, see note (c) under the T. & C. P. A., 1932, s. 25, *ante*, p. 1947, and note (c) under P. H. A., 1875, s. 150, *ante*, p. 4393. In determining whether a place is a highway repairable by the inhabitants at large, regard should first be had to the time when dedication took place. Where there was dedication and user before 1836, when the Highway Act, 1835 (9 Halsbury's Statutes 50), came into operation, the road or place became *ipso facto* repairable by the parish, i.e., the inhabitants at large. Where, on the other hand, the dedication took place after 1836, no such liability is imposed on the parish unless the formalities prescribed by Highway Act, 1835, s. 23 (9 Halsbury's Statutes 59), have been observed, or unless the road has come into existence in one or other of the modes mentioned at p. 1948, *ante*. See *per* BLACKBURN, J., in *R. v. Dukinfield (Inhabitants)* (1863), 4 B. & S. 168; 27 J. P. 805; 26 Digest 362, 873; *Eyre v. New Forest Highway Board* (1892), 56 J. P. 517; 26 Digest 260, 5; *Leigh U. C. v. King*, [1901] 1 K. B. 747; 65 J. P. 243; 26 Digest 363, 882; *Att.-Gen. v. Watford R. D. C.*, [1912] 1 Ch. 417; 76 J. P. 74; 26 Digest 285, 192, and the other cases and statutes referred to at p. 1947, *ante*. Where there has been a dedication since 1836 without such formalities there is, except as to a highway which has come into existence in one of the modes mentioned at p. 1948, *ante*, no one liable to repair: see *R. v. Wilson* (1852), 18 Q. B. 348; 16

J. P. 567 ; 26 Digest 363, 880 ; *Roberts v. Hunt* (1850), 15 Q. B. 17 ; 14 J. P. 226 ; 26 Digest 362, 879 ; *Fawcett v. York and North Midland Rail. Co.* (1851), 16 Q. B. 610 ; 38 Digest 310, 331 ; *Cubitt v. Maxse* (1873), L. R. 8 C. P. 704 ; *sub nom. Maxse v. Cubitt*, 37 J. P. 808 ; 26 Digest 282, 181.

**Note to
Section 39.**

(c) The P. H. A., 1875, s. 149, *ante*, p. 4375, enables an urban authority to place and keep in repair fences and posts for the safety of foot passengers, but does not contemplate the appropriation of part of the street for a refuge. The Road Traffic Act, 1930, s. 55 (Vol. V. and 23 Halsbury's Statutes 652), contains more specific provisions as to refuges and shelters.

As to the liability of a local authority for negligence in omitting to maintain a danger lamp on a refuge, see *Baldock v. Westminster City Council* (1918), 83 J. P. 98 ; 88 L. J. K. B. 502 ; 26 Digest 392, 1190. It should be observed, however, that this case was decided with reference to the Metropolis, where the obligation of a local authority to light the street differs from that arising under the P. H. A., 1875, s. 161, *ante*, p. 4445. The decision may, however, be of general application on the ground that if a local authority choose to provide a refuge they must take care that it does not create a danger if left without light. *Cf. Sheppard v. Glossop Corporation*, [1921] 3 K. B. 132 ; 85 J. P. 205 ; 26 Digest 393, 1197, where it was held that the P. H. A., 1875, *ante*, p. 4445, conferred on authorities a discretion but imposed on them no duty to light streets ; that having begun they are not bound to continue to light a street ; and that if they do nothing to make the street dangerous, they are under no obligation, by lighting or otherwise, to give warning of danger.

40.—(1) An urban authority may from time to time provide, maintain, and remove in or near any street in their district suitable erections for the use, convenience, and shelter of drivers of hackney carriages, and such other persons as the urban authority may permit to use the same.

Cabmen's
shelters.

This section has been applied generally to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Minister of Health under s. 5, *ante*, p. 4803, but the exercise of powers thereunder is made subject to the consent of the county council. It is applied to county councils by Sched. I., L. G. A., 1929, Vol. V., and 10 Halsbury's Statutes 975, in relation to all streets in a rural district and to "county roads" as defined by s. 29 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, in urban districts.

As to the effect of that Act upon the exercise of functions under the section in the text by urban district councils in relation to "county roads" and by rural district councils, see the note to s. 39, *ante*, p. 4814.

For the definition of a "street," see *ante*, p. 4386.

There is nothing in the older Public Health Acts on this subject. Except under the power hereby conferred, a cabmen's shelter placed in a highway would be a nuisance, as being an obstruction of the public way.

For the definition of a "hackney carriage," see Town Police Clauses Act, 1847, s. 38, and Town Police Clauses Act, 1889, s. 4, *ante*, pp. 4237, 4785 ; *Hickman v. Birch* (1889), 24 Q. B. D. 172 ; 54 J. P. 406 ; 39 Digest 240, 146 ; *Hawkins v. Edwards*, [1901] 2 K. B. 169 ; 65 J. P. 423 ; 42 Digest 862, 143.

(2) The urban authority may from time to time make regulations for prescribing the terms and conditions and the fees (if any) to be charged for the use of such places of shelter, and may make byelaws for regulating the conduct of persons using the same.

Regulations are made under the P. H. A., 1875, s. 188, *ante*, p. 4468 ; they require no confirmation. As to the making, etc., of byelaws, see s. 9, *ante*, p. 4805.

41. Where this Part of this Act is adopted, section one hundred and fifty-two of the Public Health Act, 1875, shall be repealed, and the following provisions shall be substituted in lieu thereof :

Adoption
of private
streets.

(1) Whenever all or any of the works mentioned in section one hundred and fifty of the Public Health Act, 1875, have been

Section 41.

executed in a street or part of a street under that section by an urban authority, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large.

See form of notice in the *Encyclopædia of Forms and Precedents*, Vol. XII., p. 583. In districts where the Private Street Works Act, 1892, has been adopted, the section will not be in force: see *ibid.*, ss. 19, 25, *post*, pp. 4866, 4869.

In *Att.-Gen. v. Bidder* (1881), 47 J. P. 263; 26 Digest 374, 996, it was held that s. 152, *ante*, p. 4423, was not a complement to s. 150, *ante*, p. 4388; that in order that an urban authority might declare a street not repairable by the inhabitants at large to be a highway, so that it might become so repairable, it was necessary that all the works specified in s. 152 should, at the time of declaration, have been executed upon the street to the satisfaction of the authority; that the authority had not under s. 152 any discretion as to which of the works therein mentioned they should require to be executed; that their discretion was limited to their being satisfied with the efficiency of each description of work when done; *semble*, also kerbing a road did not answer the requirement of the section that the road must be *flagged*, this term meaning paved with flagged stones; and wooden paving did not come within the meaning of any of the requirements of this section. See now as to this last dictum, s. 11 (2), *ante*, p. 4806.

This decision frequently prevented an authority from adopting a street, and the provision in the text was intended to obviate such difficulty. If this Part of the Act is adopted, and *any* of the works mentioned in s. 150 (*i.e.*, sewerage, levelling, paving, metalling, flagging, channelling, making good, and lighting) have been done *by the authority* under that section, they may declare the street a highway, though some of these works may not have been done. The section does not, however, seem to deal with the case of owners voluntarily or upon notice from the authority carrying out the works required.

Where the P. H. A. Amendment A., 1907, s. 19, *post*, p. 5045, has been applied to a district, and the local authority have in pursuance of the provisions of sub-s. (4) been required to proceed under s. 150, they must declare a street to be a highway repairable, etc., as soon as the necessary works have been completed.

Section 82 of the P. H. A., 1925, Vol. V., *post*, enables the majority of the frontagers upon a street which has been made up under s. 150 of the P. H. A., 1875, since September 8th, 1925, to compel the urban authority to take over the street.

The Private Street Works Act, 1892, *post*, p. 4848, is now applied to all rural districts by its application to county councils as the highway authority in such districts by Sched. I. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975. Any powers formerly exercisable by rural district councils under s. 150 of the P. H. A., 1875, have been determined by L. G. A., 1929, s. 30 (3), Vol. V. and 10 Halsbury's Statutes 904.

- (2) Provided that no such street shall become a highway so repairable if within one month after such notice has been put up the owner or the majority in number or value of owners of such street by notice in writing to the urban authority object thereto, and in ascertaining such majority joint owners shall be reckoned as one owner.

This sub-section corresponds with the concluding paragraph of the P. H. A., 1875, s. 152, *ante*, p. 4423, with the substitution of *owners* for *proprietors*. In *Steward v. Metropolitan Electric Tramways, Ltd.* (Oct. 23rd, 24th, 25th, 1907), WARRINGTON, J., held that the "owners" referred to are the owners of the soil of the street and not the frontagers (in a case where the latter do not also own the street itself). See form of notice of objection in the *Encyclopædia of Forms and Precedents*, Vol. XII., p. 584.

42. Any urban authority may from time to time authorise the erection in any street or public place within their district of any statue or monument, and may maintain the same, and any statue or monument erected within their district before the adoption of this Part of this Act, and may remove any statue or monument the erection of which has been authorised by them. **Section 42.**
—
Statues and monuments.

This section is not applied to county councils by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, but since they became the highway authority in respect of all streets in rural districts and of "county roads" in urban districts, their consent must be obtained to the erection of a statue or monument in a "county road" vested in them in addition to the authorisation by the district council required by this section.

This section has been applied generally to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Minister of Health under s. 5, *ante*, p. 4803, but powers thereunder may only be exercised with the consent of the county council. It has been found to be particularly useful for the purpose of enabling rural district councils to authorise the erection of war memorials on highways.

Hitherto it had been more than doubtful whether any statue or monument could lawfully be set up in a public highway. The urban authority are surveyors of highways under the P. H. A., 1875, s. 144, *ante*, p. 4350, but neither that section nor s. 149, *ante*, p. 4375, empowered them to put any permanent structure in a highway, thereby obstructing the public right of passage. In *Hildreth v. Adamson* (1860), 8 C. B. (N. S.) 587; 25 J. P. 645; 26 Digest 306, 375, the question was raised, but not decided, whether a public fountain might lawfully be erected in a highway.

Power to erect or consent to the erection of public drinking fountains in streets is given by s. 14 of the P. H. A., 1925, Vol. V., *post*, which may be adopted by any local authority.

As to the maintenance, etc., of war memorials, see the War Memorials (Local Authorities' Powers) Act, 1923, Vol. V. and 10 Halsbury's Statutes 875.

43. Any urban authority may, if they see fit, cause trees to be planted in any highway repairable by the inhabitants at large within their district, and may erect guards or fences for the protection of the same, provided that this power shall not be exercised nor shall any trees so planted be continued so as to hinder the reasonable use of the highway by the public or any person entitled to use the same, or so as to become a nuisance or injurious to any adjacent owner or occupier. Trees in roads.

This section has been applied generally to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Minister of Health under s. 5, *ante*, p. 4803, but powers thereunder may only be exercised with the consent of the county council. It is applied to county councils by Sched. I., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 975, in relation to "county roads" as defined by s. 29 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, in urban and rural districts. As to the effect of that Act upon the exercise of functions under the section in the text by urban and rural district councils in relation to "county roads," see the note to s. 39, *ante*, p. 4814.

Apart from the provisions of this section an urban authority had no power to erect trees in a public highway. But now by the Roads Improvement Act, 1925, s. 1, Vol. V., *post*, the Minister of Transport, county councils, and highway authorities are empowered to plant trees or shrubs in and lay out grass margins to highways maintainable by him or them and to do anything expedient for the maintenance or protection of such trees, shrubs, and grass margins. The corporation of Lewes were convicted at the Sussex Assizes of causing a nuisance to the highway by planting trees therein ((1886), Times, March 9th). Even now under the above provisions the power to plant trees is not absolute; regard must be had to the public right of passage, and to the comfort and convenience of owners and occupiers. If these matters are not duly regarded it is probable that an indictment would lie as formerly. It has been held that an urban authority who under this section causes trees to be planted in a highway and erects guards for the protection of the same, has a duty to take

**Note to
Section 43.**

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reasonable steps to protect the public from accidents arising therefrom in any abnormal or exceptional circumstances that may occur (*Morrison v. Sheffield Corporation*, [1917] 2 K. B. 866; 81 J. P. 277; 26 Digest 445, 1623).

The adjacent owner may, if the branches overhang his land, cut them off, without notice to the authority, so far as they overhang his land, provided he does not go off his own land to do so (*Lemmon v. Webb*, [1895] A. C. 1; 59 J. P. 564; 36 Digest 205, 472). See also *Smith v. Giddy*, [1904] 2 K. B. 448, and *Simmons v. Saunders* (1914), 137 L. T. Jo. 39 (county court). As to roots undermining a neighbour's wall, see *Middleton v. Humphries* (1913), 47 L. L. T. 160; 2 Digest 65, h, and *Butler v. Standard Telephones and Cables, Ltd.*, *McCarthy v. Same*, [1940] 1 K. B. 399; [1940] 1 All E. R. 121; Digest Supp.

The urban authority are not liable as highway authority to an action for damages at the suit of a person injured by a branch overhanging a highway which the authority have neglected to cause to be lopped so as to prevent injury and danger to persons lawfully using the highway, for such neglect is a mere non-feasance (*Tregellas v. London C. C.* (1897), 14 T. L. R. 55; 26 Digest 403, 1264). And where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus company have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the company liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging (*Trinder v. G. W. Ry.* (1919), 35 T. L. R. 291; Digest Supp.), but see *Radley v. London Passenger Transport Board*, [1942] 1 All E. R. 433; 106 J. P. 164.

The Minister of Health is willing to entertain applications from urban authorities for sanction to loans for the provision of trees and the necessary guards. The usual term for repayment is ten years.

Parks and
pleasure
grounds.

44.—(1) An urban authority may on such days as they think fit (not exceeding twelve days in any one year, nor four consecutive days on any one occasion) close to the public any park or pleasure ground provided by them or any part thereof, and may grant the use of the same, either gratuitously or for payment, to any public charity or institution, or for any agricultural, horticultural, or other show, or any other public purpose, or may use the same for any such show or purpose; and the admission to the said park or pleasure ground, or such part thereof, on the days when the same shall be so closed to the public may be either with or without payment, as directed by the urban authority, or, with the consent of the urban authority, by the society or persons to whom the use of the park or pleasure ground, or such part thereof, may be granted: Provided that no such park or pleasure ground shall be closed on any Sunday or public holiday.

See s. 164 of the P. H. A., 1875, *ante*, p. 4451, and the notes thereto, and ss. 76 and 77 of the P. H. A. Amendment A., 1907, *post*, p. 5055. The last-mentioned sections will, however, only apply to districts where they have been put in force by Order of the L. G. B. or the Minister of Health, though the first has now been generally applied to rural districts. See also s. 56 of the P. H. A., 1925, Vol. V., *post*, which applies to all districts in which ss. 76 and 77 of the P. H. A. Amendment A., 1907, are in force, and may be applied to any other district by an order of the Minister.

This section has now been generally applied to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Minister of Health under s. 5, *ante*, p. 4803. The powers must, of course, be combined with those of s. 164 of the P. H. A., 1875, which are now also generally applied to rural districts (see *ante*, p. 4451). In rural districts, however, the parish councils have similar powers for the provision and maintenance of recreation grounds, so that it is not often necessary for the rural district council to act. See s. 8 (1) (b) and (d) of the L. G. A., 1894, *post*, p. 4896.

The fact that charges may be made for the use of the park or pleasure ground under this section does not apparently make it rateable (*Manchester Corporation v. Chorlton Union* (1899), 15 T. L. R. 327; 36 Digest 247, 13; *Liverpool Corporation*

v. West Derby Assessment Committee, [1908] 2 K. B. 647; 72 J. P. 397; 36 Digest 248, 20; but see *North Riding of Yorkshire County Valuation Committee v. Redcar Corporation*, [1942] 2 All E. R. 589.

Note to
Section 44.

(2) An urban authority may either themselves provide and let for hire, or may license any person to let for hire, any pleasure boats on any lake or piece of water in any such park or pleasure ground, and may make byelaws for regulating the numbering and naming of such boats, the number of persons to be carried therein, the boathouses and mooring places for the same, and for fixing rates of hire and the qualifications of boatmen, and for securing their good and orderly conduct while in charge of any boat.

This provision applies only when there is a lake or water in a public park or pleasure ground provided by the authority. They cannot provide boats, etc. for use on the sea or a river, though they may license the owners and boatmen of boats and vessels under the P. H. A., 1875, s. 172, *ante*, p. 4460. Boats provided under this section need not apparently be registered under the Merchant Shipping Act, 1894 (18 Halsbury's Statutes 162): see *Southport (Mayor, etc. of) v. Morriss*, [1893] 1 Q. B. 359; 57 J. P. 231; 41 Digest 672, 5035.

As to the making, etc. of the byelaws, see s. 9, *ante*, p. 4805.

45. The powers of an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, to contribute to the support of public walks or pleasure grounds, shall include a power to contribute towards the cost of the laying out, planting, or improvement of any lands provided by any person which have been permanently set apart as public walks or pleasure grounds, and which, whether in the district of the urban authority or not, are so situated as to be conveniently used by the inhabitants of the district, and shall also include a power to contribute towards the purchase by any person of lands so situate and to be so set apart as aforesaid.

Extension of
88 & 89 Vict.
c. 55, s. 164.

This section has been applied generally in rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Minister of Health under s. 5, *ante*, p. 4803.

See the P. H. A., 1875, s. 164, *ante*, p. 4451, and the notes thereto, and the last section.

The word "person" includes a body corporate (P. H. A., 1875, s. 4, *ante*, p. 4384), and the text, therefore, enables an authority to contribute towards the purchase, laying out, and support of public walks, etc., provided by an adjoining authority.

46. Section one hundred and sixty-five of the Public Health Act, 1875, shall be extended so as to enable any urban authority to pay the reasonable cost of the repairing, maintaining, winding up, and lighting any public clock within their district although the same be not vested in them.

Extension of
88 & 89 Vict.
c. 55, s. 165.

The P. H. A., 1875, s. 165, *ante*, p. 4457, enables an urban authority to provide public clocks, and to cause them to be lighted at night. The text enables them to maintain public clocks, such as those on churches, etc., though they did not provide them, and though such clocks are not their property. Both s. 165 of the Act of 1875 and the section in the text have been applied generally to rural districts by the R. D. C.'s (Urban Powers) Order, 1931, *ante*, p. 3267, made by the Ministry of Health.

* * * * *

PART IV.

MUSIC AND DANCING.

51. For the regulation of places ordinarily used for public dancing or music, or other public entertainment of the like kind, the following provisions shall have effect (namely):

Music and
dancing
licences.

**Note to
Section 51.**
—

A rural authority can only obtain these powers by means of an Order of the Minister of Health under s. 5, *ante*, p. 4808. Any application for such an Order should be made by resolution of the council, a copy of which should be forwarded with a statement of the grounds upon which the application is based. The Minister will probably require to know the names and situation of the establishments which will come under the section if it is made operative, and whether complaints have been made respecting them. A local inquiry has been directed in some cases. An application may also be made by a county council, a parish council, or by ratepayers: see the P. H. A., 1875, s. 276, *ante*, p. 4502, s. 5 of this Act, *ante*, p. 4808, and the L. G. A., 1894, s. 25 (7), *post*, p. 4907.

When this Part of the Act is adopted by an urban authority, the resolution of the authority must be sent to the Ministry of Health and to a Secretary of State: see s. 3 (5), *ante*, p. 4808.

In many towns local Acts in *pari materia* are in force.

Other
statutory
provisions

As to Army and Navy recreation rooms, see the Army (Annual) Act, 1889, s. 7.

The section does not apply (see sub-s. (12), *post*, p. 4826) in or within 20 miles of the cities of London or Westminster, in which area the provisions on the point are— (i) in the administrative county of Middlesex, the Music and Dancing Licenses (Middlesex) Act, 1894 (19 Halsbury's Statutes 349); (ii) in Buckinghamshire, Essex, Hertfordshire and Kent, and the county boroughs of Croydon, East Ham and West Ham, the Home Counties (Music and Dancing) Licensing Act, 1926 (*op. cit.* 363); and (iii) in other parts of the area the Disorderly Houses Act, 1751 (4 Halsbury's Statutes 359), as amended by the Public Entertainments Act, 1875 (*op. cit.* 681).

The provisions of both the Middlesex Act, *supra*, and the Home Counties Act, *supra*, are almost the same as those of this section except that the respective county councils and county borough councils and not the justices are the licensing authority.

Decisions
under
Disorderly
Houses Act,
1751, etc.

The Disorderly Houses Act, 1751, s. 2 (*op. cit.* 360), provides that any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof (repealed by the Middlesex Act, *supra*, as regards the administrative county of Middlesex, and by the Home Counties Act, *supra*, as regards the area scheduled thereto), without a licence had for that purpose from the preceding Michaelmas quarter sessions of the peace (now the London County Council) (L. G. A., 1888, s. 3, *ante*, p. 4722) shall be deemed a disorderly house or place. See also L. G. A., 1888, s. 4, and the amending Public Entertainments Act, 1875 (as to hours of opening), both also repealed as to Middlesex, and the area scheduled to the Home Counties Act, *supra*.

The following cases have been decided with reference to the Act of 1751: It extends to houses kept for the purpose of comparatively private dancing, not only to perfectly public places (*Clarke v. Searle* (1793), 1 Esp. 25); but a room kept by a dancing master for the instruction of his scholars and subscribers, and to which persons are not indiscriminately admitted, is not within it (*Bellis v. Burghall* (1799), 2 Esp. 722; 15 Digest 757, 8148).

A room in which musical performances are regularly given, though it is not kept or used solely for that purpose, is within the statute, and requires a licence (*Bellis v. Beal* (1797), 2 Esp. 591; 42 Digest 919, 144).

The statute extends to licensed taverns and hotels, and it is no defence that the company frequenting the performance was respectable or that the admission money was not received for the benefit of the keeper of the house (*Green v. Botheroyd* (1828), 3 C. & P. 471; 15 Digest 757, 8150). But a temporary use of a room in a public-house for the purpose of dancing on a particular festival or occasion does not subject the owner to a penalty (*Shutt v. Lewis* (1804), 5 Esp. 128; 8 R. R. 840; 15 Digest 758, 8163).

To subject a party to penalties for keeping a house for illegal dancing and music, it is not necessary that he should take money for admission (*Archer v. Willingrice* (1802), 4 Esp. 186; 15 Digest 757, 8149). Where a room above the bar of a public-house was used for music and dancing, the keeper of the house was held liable for not having a licence, though the persons using the room paid nothing to him for it (*Frailing v. Messenger* (1867), 31 J. P. 423; 16 L. T. 494; 15 Digest 758, 8152). A room used for public music or dancing is within the statute, although it is not exclusively used for those purposes, and although no money is taken for admission; but the mere accidental or occasional use of a room for either or both of these pur-

poses will not be within the statute (*Gregory v. Tuffs* (1833), 6 C. & P. 271; 1 Mood & R. 313; 15 Digest 758, 8162; *Gregory v. Tavernor* (1833), 6 C. & P. 280; 15 Digest 758, 8164).

In an action to recover the penalty for keeping an unlicensed house for public dancing, it appeared that music, dancing, etc., had occasionally taken place at the defendant's publichouse, and that no money was taken by him for admission, but the rooms were let to persons who sold tickets and received money for admission at the door; but there was no direct evidence that the defendant knew of this practice:—*Held*, that there was evidence to go to the jury of a keeping of the house by the defendant for the purposes mentioned, and that the judge was wrong in directing a non-suit (*Marks v. Benjamin* (1839), 5 M. & W. 565; 4 J. P. 44; 15 Digest 758, 8151).

No action can be maintained on an agreement to exhibit entertainment for gain in a place where, by the statute, a licence cannot be obtained (*Levy v. Yates* (1838), 8 Ad. & El. 129; 3 Nev. & P. K. B. 249; 42 Digest 904, 7).

A room kept for public dancing or music without a licence is a disorderly house under this Act, though no disorderly or improper conduct is allowed. The preamble does not confine the section to "places of entertainment for the lower sort of people," where robberies are likely to ensue. A defendant indicted for keeping such house must prove his licence (*R. v. Wolfe* (1849), 13 J. P. 428; 15 Digest 758, 8158).

A. kept a room which was used as a supper-room and place of general refreshment, there being at the end of it a raised platform, on which stood a piano, and where songs were constantly sung. Programmes of the performance were laid about in different parts of the room. The company was respectable, and no money was paid for admission, nor any extra charge made for the articles consumed there. An action having been brought for a penalty under the Act, the judge asked the jury whether the room was used for the purpose of supplying refreshments in the manner of an hotel, the music and singing being incidental merely, or whether it was used principally for musical performances; and ultimately he directed them to consider whether the room was used for both purposes, in which latter case the informer would be entitled to the verdict. The jury said that the room was used for the purpose of an hotel, and found a verdict for A.:—*Held*, that although the verdict might be against the evidence, there was no misdirection (*Hall v. Green* (1853), 9 Exch. 247; 17 J. P. 777; 15 Digest 758, 8165).

Under similar words in a local Act it was held that to bring a case within the statute the music and dancing must be an essential part of the entertainment, and not merely accessories to it. It is not necessary that the dancing should be by the public (*Quaglieni v. Matthews* (1865), 6 B. & S. 474; 29 J. P. 439; 15 Digest 758, 8154). See also 73 J. P. N. 458 (a gramophone and cinematograph entertainment combined).

A common informer having recovered in an action from the defendant the penalty of £100 for keeping a house without a licence, it was held that only one penalty was recoverable, and that a second action by another common informer to recover a like penalty was not maintainable (*Garrett v. Messenger* (1867), L. R. 2 C. P. 583; 31 J. P. 423; 15 Digest 759, 8171); but see also *Girdlestone v. Brighton Aquarium Co.* (1879), 4 Ex. D. 107; 43 J. P. 428; 15 Digest 760, 8178; *Barrett v. Johnson* (1836), 2 Jo. Ex. Ir. Rep. 197; *Apothecaries Co. v. Jones*, [1893] 1 Q. B. 89; 57 J. P. 56; 34 Digest 558, 170.

Under the statute the justices have a discretion to grant a licence for music only; and the keeper of a house with a music licence only is liable to a penalty for keeping a house without a licence if he permits public dancing in the house (*Brown v. Nugent* (1871), L. R. 6 Q. B. 693; 36 J. P. 22; on appeal (1872), L. R. 7 Q. B. 588; 42 Digest 919, 151).

Under similar provisions in a local Act it was held that the justices had an implied right to grant the licence for one year, though no period was mentioned in the statute, and that they were entitled to refuse to renew it (*Hoffmann v. Bond* (1875), 40 J. P. 5; 32 L. T. 775; 42 Digest 920, 152). See hereon sub-s. (2), *post*, p. 4823.

The defendant kept a skating rink, enclosed by a wall, partly roofed with canvas and partly open to the air. It was open for skating in the daytime and in the evening. In the daytime there was no music. In the evening a band played operatic and dance music while the skaters skated. The defendant had no licence. It was held that he might be properly convicted of keeping a place of public entertainment of a like kind to music and dancing without a licence, and, *semble*, that he might also be convicted

Note to Section 51. of keeping a place for public music without a licence (*R. v. Tucker* (1877), 2 Q. B. D. 417; 41 J. P. 405; 15 Digest 759, 8167).

C. was lessee of a theatre duly licensed under Theatres Act, 1843 (19 Halsbury's Statutes 335); he also held a justices' licence under the Act of 1751 (4 Halsbury's Statutes 359), and on Ash Wednesday he gave a concert in the theatre, to which the public were admitted for money. Both his licences contained a regulation that no entertainment should be given on Ash Wednesday. It was held that he did not commit an offence against the Act of 1751, as the concert was not a public entertainment *ejusdem generis* with public dancing, and, at all events, the room was not habitually kept for such entertainment (*Syers v. Conquest* (1873), 37 J. P. 342; 28 L. T. 402; 15 Digest 758, 8156).

D. was convicted under the Theatres Act, 1843, for keeping a place for the public performance of stage plays, and for causing to be acted there certain parts in a stage play without the licence required by that Act. It was proved that he was the occupier of a hall, which, though licensed for public dancing and music, was not licensed as a theatre, and that one end of that hall was fitted up with a stage, where, with lights and scenery and the other accessories of a stage, he caused to be presented for the amusement of the public, for which they paid, a performance sustained by living persons with a dialogue between them and a regular plot, distinguished only from an ordinary stage play by all the actors except two (the dialogue between whom was wholly subordinate to the plot of the piece) being not bodily on the stage, but represented merely by a reflection of their figures on a mirror at the back of the stage, so ingeniously contrived that to the spectators the appearance was that of persons actually upon the stage:—*Held*, that there had been a violation of the statute, and that the conviction was right (*Day v. Simpson* (1865), 18 C. B. (N.S.) 680; 34 L. J. M. C. 149; 42 Digest 918, 138).

A performance in a place duly registered as a place of public worship, in which no music but sacred music is performed or sung, where nothing dramatic is introduced, where the discourses delivered are intended to be instructive and contain nothing hostile to religion, is not an entertainment within the meaning of the Sunday Observance Act, 1780 (4 Halsbury's Statutes 379). Therefore, where services were held on a Sunday evening in a registered place, and at such services sacred music was performed by amateur and professional performers, and addresses given, and a small sum charged for reserved seats, it was held that an action could not be maintained against the president of such association under the above Act (*Baxter v. Langley* (1868), L. R. 4 C. P. 21; 32 J. P. 805; 15 Digest 759, 8173). See for other cases under this Act, *Reid v. Wilson*, [1895] 1 Q. B. 315; 59 J. P. 516; 15 Digest 759, 8177; *Terry v. Brighton Aquarium Co.* (1875), L. R. 10 Q. B. 306; 39 J. P. 519; 15 Digest 759, 8174; *Warner v. Brighton Aquarium Co.* (1875), L. R. 10 Exch. 291; 15 Digest 759, 8175; *Girdlestone v. Brighton Aquarium Co.* (1879), 4 Ex. D. 107; 43 J. P. 428; 15 Digest 760, 8178; *Orpen v. Haymarket Capitol, Ltd.* (1931), 95 J. P. 199; Digest Supp.; *Kelly v. Allen* (1936), 80 Sol. Jo. 148; *Green v. Berliner*, [1936] 2 K. B. 477; [1936] 1 All E. R. 199; Digest Supp.; *Kitchener v. Evening Standard Co., Ltd.*, [1936] 1 K. B. 576; [1936] 1 All E. R. 48; Digest Supp.; *Green v. Kursaal (Southend-on-Sea) Estates, Ltd.*, [1937] 1 All E. R. 732; Digest Supp. As to remission of penalties, see Remission of Penalties Act, 1875, s. 1 (4 Halsbury's Statutes 687).

1. After the expiration of six months from the adoption of this Part of this Act, a house, room, garden, or other place (a), whether licensed or not for the sale of wine, spirits, beer, or other fermented or distilled liquors, shall not be kept or used for public dancing, singing, music, or other public entertainment of the like kind (b) without a licence for the purpose or purposes (c) for which the same respectively is to be used first obtained from the licensing justices of the licensing district (d) in which the house, room, garden, or place is situate, and for the registration thereof a fee of five shillings shall be paid by the person applying therefor (e);

**Note to
Section 51.**

—
"Place."

(a) By the proviso to s. 5 of the Baths and Washhouses Act, 1878, no covered or open swimming bath provided under the Baths and Washhouses Acts when closed during the winter months might be used for music or dancing. But this proviso was repealed as to the county of London by the Baths and Washhouses Act, 1896 (13 Halsbury's Statutes 873), and as to places outside that county by the Baths and Washhouses Act, 1899 (*op. cit.* 880): *Att.-Gen. v. Walthamstow U. C.*, [1910] 1 Ch. 347; 74 J. P. 147; 38 Digest 207, 426; *Att.-Gen. v. Shoreditch Corporation*, [1915] 2 Ch. 154; 79 J. P. 369; 38 Digest 207, 427.

As to naval and military recreation rooms, see the Army (Annual) Act, 1889, s. 7.

As to what is "a place" within the meaning of the Act, reference may be made to cases under the Betting Act, 1853 (8 Halsbury's Statutes 1156). *B.* hired a piece of ground on the cliff near the end of the esplanade at Margate, and permitted certain persons to use a portion of the land for public entertainments, comprising music and dancing. This portion was enclosed partly by ropes and stakes, and partly by chains, no charge for admission being made, but a hat being passed round for donations after each turn, and the performers being accommodated with a tent for dressing purposes. It was held that *B.* ought to have a licence under this Act (*Farndale v. Bainbridge* (1898), *Times*, January 14th). See also as to occasional user of wireless in a hotel *Badger v. James* (1934), 78 Sol. Jo. 768.

(b) The landlord of an hotel, by merely permitting his customers on many occasions "Keep or to sing in one of the public rooms of the hotel, and to use a pianoforte kept there by use," him, does not thereby keep or use such room for public singing, music, or other public entertainment of the like kind within the meaning of the section (*Brearley v. Morley*, [1899] 2 Q. B. 121; 63 J. P. 582; 15 Digest 759, 8172). See also *Hall v. Green*, *Quaglieni v. Matthews*, *R. v. Tucker*, on p. 4821—2, *ante*. See also as to what amounts to "keeping or using," *Marks v. Benjamin*, *ante*, p. 4821; *Martin v. Benjamin*, [1907] 1 K. B. 64; 71 J. P. 30; 25 Digest 458, 465; *R. v. Belfast J.J.*, [1914] 2 I. R. 181; *Vecsey v. Smith* (1916), 81 J. P. 1; 86 L. J. K. B. 249; 2 Digest 197, 558, and also *Orpen v. Haymarket Capitol, Ltd.*, and other cases cited *supra*. See also as to gramophone music, 72 J. P. N. 160. Whether the dancing, etc. is public or not is a question of fact for the justices. The trustees of a burial society owned a room which, when not required for the purposes of the society, was let by them for balls, etc. It was so let on several occasions to a committee of gentlemen who got up subscription dances, for which they issued invitations to subscribers of one guinea or more, each subscriber of one guinea securing thereby admission for himself and one lady. It was held that a decision of quarter sessions quashing a conviction of the trustees for not having a licence, on the ground that the balls were not public, could not be reversed, it being a question of fact whether the balls were public or not (*Maloney v. Lingard* (1898), *Times*, January 14th).

The "user" or "keeping" must be more or less regular (*Marks v. Benjamin*, *Syers v. Conquest*, and other cases on pp. 4821 *et seq.*).

(c) They may grant a licence for one purpose only: see *Brown v. Nugent*, *ante*, p. 4821. A music and dancing licence does not cover stage plays (*Levy v. Yates*, *Day v. Simpson*, pp. 4821—2, *ante*), nor does a theatre licence cover music and dancing (*Syers v. Conquest*, p. 4822, *ante*). But the same room may have both licences.

(d) For definitions of "licensing justices," "licensing district," see sub-s. (13), *post*, p. 4826.

(e) This fee is presumably payable to the clerk of the justices. Under the Middlesex Act, *ante*, p. 4820, no fee is payable for a charitable entertainment. Under the Home Counties Act, *ante*, p. 4820, a reduced fee is payable for a charitable entertainment.

2. Such justices may, under the hands of a majority of them assembled at their general annual licensing meeting or at any adjournment thereof or at any special session convened with fourteen days' previous notice, grant licences to such persons as they think fit to keep or use houses, rooms, gardens, or places for all or any of the purposes aforesaid upon such terms and conditions, and subject to such restrictions as they by the respective licences determine, and every licence shall be in force for one year or for such shorter period as the justices on the grant of the licence

**Note to
Section 51.**

shall determine, unless the same shall have been previously revoked as hereinafter provided :

The general annual licensing meeting, at which new licences and renewals of licence for the sale of intoxicating liquor are granted, is held within the first fourteen days of February in every year. The justices must hold at least one adjournment of the meeting, not less than six days and not more than a month after the original meeting : see the Licensing (Consolidation) Act, 1910, s. 10 (9 Halsbury's Statutes 991).

The "special session" here mentioned is not a "transfer session" for the transfer of liquor licences. It is an ordinary special session of the justices of the division convened in the usual way. See *R. v. Oldham JJ., Ex parte Mellor* (1909), 73 J. P. 390 ; 101 L. T. 430 ; 42 Digest 920, 155, as to a slightly different clause in a local Act. As to the notice of the intention to apply for a licence, see sub-s. (4), *post*, p. 4825.

A licence may be granted for music only, or for dancing only, or as the case may be : see *Broun v. Nugent, ante*, p. 4821. Applications for these licences must be determined judicially. See *R. v. London C. C., Ex parte Akkersdyk, Ex parte Fermentia*, [1892] 1 Q. B. 190 ; 56 J. P. 8 ; 33 Digest 103, 698 ; *Royal Aquarium and Summer and Winter Garden Society v. Parkinson*, [1892] 1 Q. B. 431 ; 56 J. P. 404 ; 33 Digest 104, 699.

As to the duration of the licence, see also *Hoffman v. Bond, ante*, p. 4821.

Temporary licences may also be granted by petty sessions under sub-s. (11), *post*, p. 4826.

Justices have full discretion in granting or transferring these licences, and the Act gives no appeal against a refusal, for the justices are not a Court of Summary Jurisdiction within the meaning of s. 7, *ante*, p. 4804. See *Huish v. Liverpool JJ.*, [1914] 1 K. B. 109 ; 78 J. P. 45 ; 42 Digest 920, 156. Cf. *R. v. Ashton, Ex parte Walker* (1916), 79 J. P. 444 ; Digest Supp., where a right of appeal was given under a local Act.

The terms, conditions, and restrictions annexed to a licence may be conveniently indorsed on the licence, and may be printed or written. Apparently a condition that the licensee should not apply for a licence to sell intoxicating liquors would, if imposed under the special circumstances of the case and not in pursuance of any general rule to that effect, be held good : see *R. v. West Riding of Yorkshire C. C.*, [1896] 2 Q. B. 386 ; 60 J. P. 550 ; 42 Digest 904, 10 ; *Manchester Palace of Varieties, Ltd. v. Manchester Corporation* (1898), 62 J. P. 425 ; 42 Digest 904, 11 ; *R. v. Sheerness U. D. C.* (1898), 62 J. P. 563 ; 14 T. L. R. 533 ; 42 Digest 904, 12. The holder of a music and dancing licence (as opposed to a theatre licence) cannot obtain a liquor licence without a justices' licence therefore (*R. v. Inland Revenue Commissioners* (1888), 21 Q. B. D. 569 ; 52 J. P. 390 ; 42 Digest 765, 1914).

In granting a music and dancing licence for a hall in connection with licensed premises, the justices imposed a condition that a sum of 3d. (at least) should be charged to each person for admission, and should not be refunded in the form of refreshment. It was held that the imposition of such a condition was justified (*Ex parte Richards* (1904), 68 J. P. 536 ; 20 T. L. R. 669 ; 42 Digest 920, 153).

See also *London C. C. v. Bermondsey Bioscope Co., Ltd.*, [1911] 1 K. B. 445 ; 75 J. P. 53 ; 42 Digest 921, 164 ; *Ellis v. North Metropolitan Theatres*, [1915] 2 K. B. 61 ; 79 J. P. 297 ; 42 Digest 919, 148 ; *R. v. L. C. C., Ex parte Entertainments Protection Association, Ltd.*, [1931] 2 K. B. 215 ; 95 J. P. 89 ; Digest Supp., as to imposing a condition against Sunday opening in the case of cinematograph exhibitions. And see also as to conditions imposed on the grant of cinematograph licences : *Theatre de Luxe (Halifax), Ltd. v. Gledhill*, [1915] 2 K. B. 49 ; 79 J. P. 238 ; 42 Digest 920, 160 ; *R. v. London C. C., Ex parte London and Provincial Electric Theatres, Ltd.*, [1915] 2 K. B. 466 ; 79 J. P. 417 ; 42 Digest 920, 154 ; *R. v. Burnley JJ.* (1916), 80 J. P. 382 ; 85 L. J. K. B. 1565 ; 42 Digest 921, 161 ; *Stott v. Gamble*, [1916] 2 K. B. 504 ; 80 J. P. 443 ; 42 Digest 921, 168 ; *Ellis v. Dubovski*, [1921] 3 K. B. 621 ; 85 J. P. 230 ; 42 Digest 921, 162 ; *Mills v. London C. C.*, [1925] 1 K. B. 213 ; 89 J. P. 6 ; 42 Digest 922, 171. Provisional licences for buildings projected but not yet erected, may not be granted (*R. v. Barnstaple JJ., Ex parte Carlier*, [1938] 1 K. B. 385 ; [1937] 4 All E. R. 263 ; 101 J. P. 547 ; Digest Supp.). A licence permitting public dancing on Sundays is illegal (*R. v. Hereford Licensing JJ., Ex parte Newton*, [1940] 4 All E. R. 479 ; 104 J. P. 441 ; Digest Supp.).

As to the revocation of a licence, see sub-s. 9, *post*, p. 4826.

Conditions
attached to
licences.

3. Such justices may from time to time at any such special session aforesaid transfer any such licence to such person as they think fit : Section 51.

As to the "special session," see the note to the preceding sub-section.

As to the notice of intention to transfer, see the next sub-section.

A transfer will be necessary upon each change of occupier, as the licence is a personal one, as well as in respect of the particular premises.

4. Each person shall in each case give fourteen days' notice to the clerk of the licensing justices and to the chief officer of police of the police district in which the house, room, garden, or place is situated, of his intention to apply for any such licence or for the transfer of any such licence :

As to the clerk of the licensing justices and the chief officer of police, see sub-s. 13, *post*, p. 4826. In the case of renewals notice is not necessary (sub-s. 10, *post*, p. 4826); see also sub-s. 11, *post*, p. 4826, as to licences for short periods.

5. Any house, room, garden, or place kept or used for any of the purposes aforesaid without such licence first obtained shall be deemed a disorderly house, and the person occupying or rated as occupier of the same shall be liable to a penalty not exceeding five pounds for every day on which the same is kept or used for any of the purposes last aforesaid :

Though the house is to be deemed a disorderly house, it does not appear that the occupier will be liable to indictment for keeping a disorderly house, as a penalty is here provided which will be recoverable as provided by s. 6, *ante*, p. 4804, with appeal to quarter sessions under s. 7, *ante*, p. 4804. In this respect the present enactment differs from the Disorderly Houses Act, 1751, s. 2 (4 Halsbury's Statutes 360), under which the occupier is liable to a penalty, and to be otherwise punishable as the law directs in cases of disorderly houses. The Middlesex Act (*ante*, p. 4820) provides for entry and arrest by constables. The Home Counties Act (*ante*, p. 4820) provides for entry by a constable authorised by a warrant from a justice.

Note, that it is the occupier, and not the person using, who is liable: *cf.* *R. v. Belfast JJ.*, [1914] 2 I. R. 181; and see *Bruce v. McMannus*, [1915] 3 K. B. 1; 79 J. P. 294; 42 Digest 924, 188.

6. There shall be affixed and kept up in some conspicuous place on the door or entrance of every house, room, garden, or place so kept or used and so licensed as aforesaid, an inscription in large capital letters in the words following: "Licensed in pursuance of Act of Parliament for _____," with the addition of words showing the purpose or purposes for which the same is licensed :

The fixing and keeping up of this inscription must be inserted in and made a condition of every licence (sub-s. 8, *infra*), and a penalty for breach of the condition is imposed by sub-s. 9, *infra*.

7. Any house, room, garden, or place so kept or used, although so licensed as aforesaid, shall not be opened for any of the said purposes except on the days and between the hours stated in the licence :

The Middlesex Act and the Home Counties Act (p. 4820, *ante*) are in different terms. As to a condition not to open on Ash Wednesday, see *Syers v. Conquest*, *ante*, p. 4822. And as to Sundays, see the Sunday Observance Act, 1780 (4 Halsbury's Statutes 379), and *Baxter v. Langley* and cases cited therewith on p. 4822, *ante*.

Section 51.
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8. The affixing and keeping up of such inscription as aforesaid, and the observance of the days and hours of opening and closing, shall be inserted in and made a condition of every such licence :

As to the penalties for breach of this condition, see the next sub-section.

9. In case of any breach or disregard of any of the terms or conditions upon or subject to which the licence was granted, the holder thereof shall be liable to a penalty not exceeding twenty pounds, and to a daily penalty not exceeding five pounds, and such licence shall be liable to be revoked by the order of a court of summary jurisdiction :

As to the recovery of this penalty, see s. 6, *ante*, p. 4804. For the definition of a daily penalty, see s. 11 (3), *ante*, p. 4807. Appeal against conviction lies to quarter sessions under s. 7, *ante*, p. 4804.

10. No notice need be given under sub-section four of this section when the application is for a renewal of any existing licence held by the applicant for the same premises :

In other words, notice under sub-s. 4, *ante*, p. 4825, is necessary only on an application for a new licence or for a transfer, and not on application for a mere renewal.

11. The justices in any petty sessions may, if and as they think fit, grant to any person applying for the same a licence to keep or use any house, room, garden, or place for any purpose within the meaning of this section for any period not exceeding fourteen days which they shall specify in such licence, notwithstanding that no notices shall have been given under sub-section four of this section :

No notice is necessary before such an application is made. The application is to petty sessions for the grant of a licence for a period not exceeding fourteen days.

12. This section shall not apply within twenty miles of the cities of London or Westminster :

Within this area either the Disorderly Houses Act, 1751 (4 Halsbury's Statutes 359), or the Music and Dancing Licenses (Middlesex) Act, 1894 (19 Halsbury's Statutes 349), or the Home Counties (Music and Dancing) Licensing Act, 1926 (*op. cit.* 363), are in force.

13. In this section the expressions "licensing justice," "licensing district," and "clerk of the licensing justices" have respectively the same meanings as in the Licensing Acts, 1872—1874 (*a*) ; the expression "police district" means any area for which a separate police force is maintained ; and the expression "chief officer of police" means the chief constable, head constable, or other officer, by whatever name called, having the chief command of such separate police force (*b*).

(*a*) See now the Licensing (Consolidation) Act, 1910, ss. 2, 48 (9 Halsbury's Statutes 986, 1015), for definitions of these terms.

(*b*) A police district may be a county or a borough which has a separate police force.

[S. 52 was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1284.]

Section 1.

THE RAILWAY AND CANAL TRAFFIC (PROVISIONAL ORDERS) AMENDMENT ACT, 1891.

(54 & 55 VICT. c. 12) (a).

An Act to remove doubts as to the Powers of Public Bodies in reference to Provisional Order Bills under the Railway and Canal Traffic Act, 1888.

[11th May, 1891.]

Whereas (b)

1. Every governing body within the meaning of the Borough Funds Act (c) . . . and every county council shall be entitled to be a petitioner and to appear and oppose any Bill to confirm any provisional order made under section twenty-four of the Railway and Canal Traffic Act, 1888 (d), and to provide or contribute towards providing the expenses of the appearance or opposition of a petitioner out of the funds or rates under their respective control, as if the Bill for confirming such provisional order were a local or personal Bill within the meaning of section two of the Borough Funds Act, . . . and the provisions of the said last-mentioned Act . . . shall apply to any such appearance or opposition, and to any expenses incurred or to be incurred in relation thereto: Provided that in the case of a county council no consent of owners and ratepayers shall be required.

Powers of governing bodies and county councils with reference to Bills for confirming provisional orders made under 51 & 52 Vict. c. 25, s. 24.

(a) This Act amends the Railway and Canal Traffic Act, 1888, s. 24, *ante*, p. 4709. Its effect so far as regards sanitary authorities is to enable them to petition against and oppose any Bill confirming any provisional order under that section, subject only to compliance with the requirements of Part XIII. of the L. G. A., 1933, *ante*, p. 1116. Words relating to Scotland or Ireland only have been omitted throughout the Act. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

(b) The preamble (repealed by the S. L. R. A., 1908 (*op. cit.* 1175)), after referring to the Borough Funds Act, 1872 (10 Halsbury's Statutes 559), the L. G. A., 1888, *ante*, p. 4722, and s. 24 of the Railway and Canal Traffic Act, 1888, recited that doubt had been felt whether governing bodies as defined by the Act of 1872 and county councils had power to apply funds or rates under their control in opposing, or subscribing towards the opposition of, any Bill to confirm a Provisional Order under s. 24 of the Act of 1888, and that it was expedient to remove such doubts.

(c) The Borough Funds Acts were repealed by the L. G. A., 1933, but ample powers for this purpose are contained in *ibid.*, Part XIII., *ante*, p. 1116.

(d) See that section, *ante*, p. 4709.

2. This Act may be cited as "The Railway and Canal Traffic (Provisional Short title. Orders) Amendment Act, 1891."

THE MUSEUMS AND GYMNASIUMS ACT, 1891.

(54 & 55 VICT. c. 22.)

An Act to enable Urban Authorities to provide and maintain Museums and Gymnasiums (a).

[3rd July, 1891.]

(a) This Act in so far as it relates to gymnasiums was repealed by the Physical Training and Recreation Act, 1937, *ante*, p. 1570, and now has effect only in respect of certain museums saved by the Public Libraries Act, 1919, *post*, p. 5238. The Act had previously been amended by the L. G. A., 1933, *ante*, p. 735, and the sections are printed as so amended.

1. This Act may be cited as "The Museums and Gymnasiums Act, 1891." Short title.

Section 2.

Extent of Act.

2.—(1) This Act shall extend to any district where the same is adopted as hereinafter provided, but only so far as the adoption extends.

(2) This Act shall not extend to Scotland or the administrative county of London.

Application of Act.

3.—(1) This Act may be adopted by any urban authority (*a*) for their district either wholly or so far as it relates to museums only or to gymnasiums only.

(2) The adoption shall be by a resolution passed at a meeting of the urban authority, and one month at least before such meeting special notice of the meeting and of the intention to propose such resolution shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it, if it is either—

(a) Given in the mode in which notices to attend meetings of the authority are usually given ; or

(b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid letter, addressed to the member at his usual or last known place of abode in England.

(3) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation the Act shall extend to that district.

(4) A copy of the resolution shall be sent to the Local Government Board (*b*).

(5) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown ; and no objection to the effect of the resolution, on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first advertisement.

(a) See the definition of an urban authority in s. 14, *post*, p. 4831.

(b) The L. G. B. has now been superseded by the Minister of Health. (See Ministry of Health Act, 1919, *post*, p. 5189).

Power to provide museum and gymnasium.

4 (a). An urban authority may provide and maintain museums for the reception of local antiquities or other objects of interest, and gymnasiums with all the apparatus ordinarily used therewith, and may erect any buildings, and generally do all things necessary for the provision and maintenance of such museums and gymnasiums (*b*).

(a) So much of this section as relates to the provision of museums is now of no effect (s. 9, Public Libraries Act, 1919, *post*, p. 5241). Museums provided under the section before the passing of the 1919 Act may still be maintained, and if provided for a district which was or later becomes a library district within the Public Libraries Act are to be transferred to the library authority and maintained by them (*ibid.*). As to gymnasiums, see note (*a*), *ante*, p. 4827.

(b) The L. G. B. informed an urban district council that they were disposed to think that under this Act the council could only provide and maintain a museum to receive such things as are given them from time to time or they are able to collect without expenditure of money. "It appears to the Board, however, that the wider powers of the Public Libraries Act, would enable the council to purchase such objects as can reasonably be regarded as specimens of art and science, including archaeological specimens." See also

the British Museum Act, 1924 (10 Halsbury's Statutes 503), which enables the trustees to make loans of objects for public exhibition in any gallery or museum under the control of a public authority.

**Note to
Section 4.**

5. A museum provided under this Act shall be open to the public not less than three days in every week free of charge, but subject thereto an urban authority may admit any person or class of persons thereto as they think fit, and may charge fees for such admission, or may grant the use of the same or of any room therein, either gratuitously or for payment, to any person for any lecture or exhibition, or for any purpose of education or instruction, and the admission to the museum or room the use of which is so granted may be either with or without payment as directed by the urban authority, or with the consent of the urban authority by the person to whom the use of the museum or room is granted (a).

Admission to
museum.

(a) As to the use of museums on Sundays, see Sunday Entertainments Act, 1932, s. 4, Vol. V. and 25 Halsbury's Statutes 924.

6.—(1) A gymnasium provided under this Act shall be open to the public free of charge for not less than two hours a day during five days in every week.

Admission to
gymnasium.

(2) Subject thereto the urban authority—

(a) may regulate the admission of the public to such gymnasium, either by classes or otherwise as they think fit, and may charge fees for such admission ; and

(b) may, for not more than two hours in each day, grant the exclusive use thereof to any person or body of persons for the purpose of gymnastic exercises, for such payment and on such terms and conditions as they think fit.

(3) An urban authority may (for not more than twenty-four days in one year nor more than six consecutive days) close the gymnasium for use as a gymnasium, and grant the use of the same gratuitously or for payment to any person for the purpose of any lecture, exhibition, public meeting, entertainment, or other public purpose, and the admission on such days shall be either with or without payment as directed by the urban authority, or with the consent of the urban authority by the person to whom the use of the same is granted.

7.—(1) An urban authority may make regulations for all or any of the following matters, namely,—

Regulations and
byelaws.

(a) For fixing the days of the week or hours of the day, as the case may be, during which the museum or gymnasium is to be open to the public free of charge :

(b) For giving special facilities to students for the use of the museum :

(c) For fixing the fees to be paid for the admission of persons to the museum and for the use thereof either by students or in any other special manner :

(d) For regulating the use of the gymnasium either by classes or otherwise, and fixing the scale of fees to be paid for such use :

(e) For prescribing conditions on which the exclusive use of the museum, or any room therein, or of the gymnasium is granted in any case :

(f) For determining the duties of the instructor, officers, and servants of the urban authority in connection with a museum or gymnasium :

(g) Generally for regulating and managing the museum or gymnasium.

(2) The urban authorities may make byelaws for regulating the conduct of persons admitted to the museum or gymnasium, and may by any such byelaw provide for the removal from the museum or gymnasium of any

Section 7. person infringing any such byelaw by any officer of the urban authority or by any constable.

38 & 39 Vict.
c. 55.

All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*a*), and any enactment amending or extending those sections, shall apply to all byelaws from time to time made by an urban authority under the powers of this Act.

(*a*) See now L. G. A., 1933, Pt. XII., *ante*, p. 1093.

Closing of
museum or
gymnasium for
repairs.

8. An urban authority may at such time as they think fit close a museum or gymnasium provided by them for repairs, and shall give a fortnight's notice of their intention to close the same by affixing a notice to that effect on the door of the museum or gymnasium, as the case may be, or otherwise as they think fit.

Appointment of
officers and
servants for
museum or
gymnasium.

9. An urban authority may . . . (*a*) employ and pay instructors in connection with a gymnasium.

(*a*) Certain words repealed by the L. G. A., 1933, *ante*, p. 735.

Expenses and
borrowing.

10.—(1) The fees and other money received by an urban authority under this Act shall be applied in defraying the expenses of the museum or gymnasium in respect of which they are received.

(2). . . (*a*).

(3) An urban authority may borrow for the purposes of this Act . . . (*b*) and for that purpose . . . (*b*) sections two hundred and forty-two and two hundred and forty-three of the same Act (relating to loans by the Public Works Loan Commissioners) (*c*), as amended by section two of the Public Works Loans Act, 1879 (*d*), shall apply.

42 & 43 Vict.
c. 77.

(4) Separate accounts shall be kept of the receipts and expenditure of an urban authority in connection with any museum or gymnasium established under this Act . . . (*b*).

(5) The amount expended by an urban authority under this Act shall not in any year exceed the amount produced by the rate of a halfpenny (*e*) in the pound for a museum, and the like amount (*e*) for a gymnasium established under this Act.

(*a*) Subsection repealed by L. G. A., 1933, *ante*, p. 735.

(*b*) Certain words repealed by L. G. A., 1933.

(*c*) See these sections, *ante*, pp. 4479—80.

(*d*) See this section, *ante*, p. 4619.

(*e*) These limits are increased by 33 $\frac{1}{4}$ per cent. by L. G. A., 1929, s. 75, Vol. V. and 10 Halsbury's Statutes 932, and in special cases may be increased by a further percentage by an order of the Minister.

11.—*Repealed by L. G. A., 1933, ante, p. 735.*

Power to sell
museum or
gymnasium in
certain cases.

12.—(1) Where it appears to an urban authority that a museum or gymnasium which has been established under this Act for seven years or upwards is unnecessary or too expensive, they may, with the consent of the Local Government Board (*a*), sell the same for the best price that can reasonably be obtained for the same, and shall convey the same accordingly.

(2) Any moneys arising from such sale shall be applied toward the repayment of any money borrowed for the purpose of the museum or gymnasium sold, and, so far as not required for that purpose, shall be applied to any purpose to which capital moneys are properly applicable, and which may be approved by the Local Government Board (*a*).

(*a*) Now the Board of Education (see M. of H. (Public Libraries, etc.) Order, 1920, *ante*, p. 3186).

13. All powers given to an urban authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed. Section 13.
Powers of Act cumulative.

14. In this Act the expression "urban authority" means an urban sanitary authority under the Public Health Acts, and the expression "district" means an urban sanitary district under those Acts (a). Interpretation.

(a) See the P. H. A., 1875, s. 6 (13 Halsbury's Statutes 628).

15. [*Application of Act to Ireland.*]

THE FORGED TRANSFERS ACT, 1891.

(54 & 55 VICT. C. 43) (a).

An Act for preserving Purchasers of Stock from Losses by Forged Transfers.

[5th August, 1891.]

1.—(1) Where a company or local authority (b) issue or have issued shares, stock, or securities transferable by an instrument in writing or by an entry in any books or register (c) kept by or on behalf of the company or local authority, they shall have power to make compensation by a cash payment out of their funds for any loss arising from a transfer of any such shares, stock, or securities, in pursuance of a forged transfer or of a transfer under a forged power of attorney (d). Power to make compensation for losses from forged transfer.

(2) Any company or local authority (b) may, if they think fit, provide, either by fees not exceeding the rate of one shilling on every one hundred pounds transferred (e), to be paid by the transferee upon the entry of the transfer in the books of the company or local authority, or by insurance, reservation of capital, accumulation of income, or in any other manner which they may resolve upon, a fund to meet claims for such compensation.

(3) For the purpose of providing such compensation any company may borrow on the security of their property, and any local authority (b) may borrow with the like consent and on the like security and subject to the like conditions as to repayment by means of instalments or the provision of a sinking fund and otherwise as in the case of the securities in respect of which compensation is to be provided, but any money so borrowed by a local authority shall be repaid within a term not longer than five years. Any expenses incurred by a local authority in making compensation, or in the repayment of, or the payment of interest on, or otherwise in connexion with, any loan raised as aforesaid, shall, except so far as they may be met by such fees as aforesaid, be paid out of the fund or rate on which the security in respect of which compensation is to be made is charged.

(4) Any such company or local authority may impose such reasonable restrictions on the transfer of their shares, stock, or securities, or with respect to powers of attorney for the transfer thereof, as they may consider requisite for guarding against losses arising from forgery.

(5) Where a company or local authority compensate a person under this Act for any loss arising from forgery, the company or local authority shall, without prejudice to any other rights or remedies, have the same rights and remedies against the person liable for the loss as the person compensated would have had.

(a) This Act has been amended by the Forged Transfers Act, 1892, *post*, p. 4839. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

**Note to
Section 1.**

This Act was occasioned by the decision in *Barton v. L. and N. W. Rail. Co.* (1889), 24 Q. B. D. 77; 10 Digest 1141, 8063, where it was held that a company having registered a forged transfer of stock was bound to replace on their register as holder of the stock the name of the stockholder whose signature to the transfer had been forged, leaving the innocent transferee to bear the loss. The Act is merely enabling and not obligatory. At common law there is no liability towards an innocent transferee, but where such transferee again transfers to a third person for value, there may be a liability by estoppel towards such third person. As to estoppel, see *In re Bahia and San Francisco Rail. Co.* (1868), L. R. 3 Q. B. 584; 9 Digest 389, 2466; *Balkis Consolidated Co. v. Tomkinson*, [1893] A. C. 396; 9 Digest 288, 1786; *Dixon v. Kennerly & Co.*, [1900] 1 Ch. 833; 9 Digest 288, 1788.

The company or local authority held liable for a loss by a forged transfer may in certain cases have a remedy over against the broker or other person at whose request the forged transfer has been registered. Thus when a broker had innocently induced the Bank of England to transfer consols to a purchaser upon a power of attorney the stockholder's signature to which turned out to have been forged, it was held that he had impliedly warranted that he had the stockholder's authority, and that he was consequently liable to indemnify the bank against the claim of the stockholder for restoration (*Starkey v. Bank of England*, [1903] A. C. 114; 26 Digest 228, 1784). So also where bankers in good faith sent to a corporation a forged transfer of corporation stock with a request to register the stock in the name of the transferees, it was held that the bankers were bound to indemnify the corporation against the liability to the stockholder, whose name had been forged (*Sheffield Corporation v. Barclay*, [1905] A. C. 392; 69 J. P. 385; 26 Digest 228, 1782; see also *Bank of England v. Culler*, [1908] 2 K. B. 208; 26 Digest 228, 1785).

(b) The expression "local authority" is defined by s. 2, *infra*.

(c) Local authorities keep registers of mortgages under s. 207 of the L. G. A., 1933, *ante*, p. 1041. They may keep a register of nominal securities under s. 23 of the Local Loans Act, 1875, *ante*, p. 4538. But this Act will apply also to shares, stock, or securities transferable by an instrument in writing or by an entry in the books of the local authority.

(d) "Whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid" (see the Forged Transfers Act, 1892, s. 2, *post*, p. 4839).

(e) "With a minimum charge equal to that for twenty-five pounds" (see the Forged Transfers Act, 1892, s. 3, *post*, p. 4839).

Definitions.

"Company."

2. For the purposes of this Act—

The expression "company" shall mean any company incorporated by or in pursuance of any Act of Parliament, or by royal charter.

"Local
authority."

The expression "local authority" shall mean the council of any county or municipal borough, and any authority having power to levy or require the levy of a rate, the proceeds of which are applicable to public local purposes (a).

(a) This definition will include all sanitary authorities, urban and rural.

Application to
industrial
societies, etc.

3. This Act shall apply to any industrial, provident, friendly, benefit, building, or loan society incorporated by or in pursuance of any Act of Parliament as if the society were a company.

Application to
harbour and
conservancy
authorities.

4—(1) This Act shall apply to any harbour authority or conservancy authority as if the authority were a company.

(2) For the purposes of this Act the expression "harbour authority" includes all persons, being proprietors of, or entrusted with the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting any harbour otherwise than for profit, and not being a joint stock company.

(3) For the purposes of this Act the expression "conservancy authority" includes all persons entrusted with the duty or invested with the power of conserving, maintaining or improving the navigation of any tidal water otherwise than for profit, and not being a joint stock company.

5. [Application to colonial stock.]

Short title.

6. This Act may be cited as "The Forged Transfers Act, 1891."

THE HIGHWAYS AND BRIDGES ACT, 1891.

Section 1.

(54 & 55 VICT. C. 63.)

An Act to confer further powers on County Councils and other Authorities with respect to [County] Roads and other Highways and Bridges.

[5th August 1891.]

By the L. G. A., 1929, Pt. III., Vol. V. and 10 Halsbury's Statutes 903, county councils become the highway authority in all rural districts in substitution for the rural district councils and also in respect of classified roads in urban districts. By L. G. A., 1929, s. 29, the words "county roads," an expression which includes not only what were formerly "main roads" but also roads which are transferred by the Act, are to be substituted for "main roads" in all Acts, and consequently "county road" has throughout this Act been substituted for "main road" and must be read in the extended meaning given by s. 29.

See also the Bridges Act, 1929, Vol. V. and 9 Halsbury's Statutes 268.

1. This Act may be cited as "The Highways and Bridges Act, 1891."

Short title.

2. This Act shall not apply to Scotland or Ireland or the county of London.

Extent of Act.

3. The council of any administrative county (a), and any highway authority or authorities (b), and the council of any adjoining county, may from time to time make and carry into effect agreements with each other for or in relation to the construction, reconstruction, alteration or improvement (c), or the freeing from tolls, of any [county] road or other highway, or of any bridge (including the approaches thereto), wholly or partly situate within the jurisdiction of any one or more of the party or parties to the agreement (d).

Agreement between highway authorities for improvement of roads and bridges.

All expenses incurred by any such county council or highway authority, in pursuance of this section, shall be defrayed as part of the expenses incurred in relation to the maintenance, repair, improvement, or enlargement of bridges, main roads, or other highways by such council or highway authority (e), in such proportions as shall be determined by any such agreement as aforesaid, and any powers of borrowing, applicable to the raising of any fund for the payment of any such expenses as aforesaid, shall be applicable accordingly:

Provided that if a highway board (f) think it just that any parish or parishes specially benefited by any construction, reconstruction, alteration, or improvement under this section should bear the expense thereof, or any part of such expense, they may, with the approval of the county council of the county within which their highway district is situate, and with the assent of the inhabitants of such parish or parishes in vestry assembled, charge such expense, or such part thereof as they may think just, exclusively on such parish or parishes.

(a) See the definition, *ante*, p. 4766.

(b) The expression "highway authority" includes an urban sanitary authority (see *ante*, p. 4350).

All agreements under this section should be under seal. See generally as to contracts by local authorities the notes to s. 266 of the L. G. A., 1933, *ante*, p. 1123.

Where a surveyor of highways for a parish acting under this section entered into an agreement with a county council by which he contracted for himself and his successors as highway authority of the parish to contribute towards the building of a bridge a certain sum payable by two instalments, the second of which was to be payable after the expiration of his year of office, it was held that he had power to make such a contract under this section (*Hertfordshire C. C. v. Barnet R. D. C.*, [1902] 2 K. B. 48; 66 J. P. 531; 26 Digest 589, 2790).

(c) It will be observed that the Act does not refer to maintenance. An agreement for a new road or for an improvement of an existing road, may, however, contain provisions for maintenance as a matter incidental to the main object of the agreement.

(d) This provision will enable an urban authority to make an agreement for the making or improvement of a road outside their district if they think fit. Apart from an agreement under the Act, s. 145 of the P. H. Act, 1875, *ante*, p. 4366, is an obstacle.

**Note to
Section 3.**

(e) In urban districts the expenses will be defrayed out of the general rate.

(f) The effect of the L. G. A., 1929, Pt. III., Vol. V. and 10 Halsbury's Statutes 903, transferring to county councils the functions of highway authorities in rural districts is to render this proviso obsolete. County councils are by s. 30 (1), Vol. V. and 10 Halsbury's Statutes 904, invested with the powers of "highway boards" under the Highway Acts, 1835 to 1885 (9 Halsbury's Statutes 50, 191), which were exercisable by many rural district councils, but they are not vested with the powers of a highway board under this proviso.

Power to reduce
[county] road to
status of
ordinary
highway.
41 & 42 Vict.
c. 77.

4. Section sixteen of the Highways and Locomotives Amendment Act, 1878, shall apply to any part of a [county] road in any county, and so much of such section as requires that any order made thereunder shall be provisional, and shall be confirmed as in the said Act mentioned, is hereby repealed, *but no such order shall be made in respect of any main road within a municipal borough without the assent of the council of the said borough having been first obtained.*

See this section, 9 Halsbury's Statutes 173. The order must be made by the Minister of Transport. Words in italics were repealed by Sched. XII., Pt. III., of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 1016, and again by the Road Traffic Act, 1930, s. 122, Sched. V. (23 Halsbury's Statutes 687, 696), and accordingly a borough council no longer has an absolute power of veto, but no order is to be made under s. 16 in relation to a road within a municipal borough unless, if the borough council so require, a local inquiry has been first held (s. 31 (4), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 905). By s. 134, *ibid.*, Vol. V. and 10 Halsbury's Statutes 971, "district" includes non-county borough, urban and rural district, and "classified roads" in non-county boroughs become "county roads" by virtue of ss. 29 and 31, *ibid.*, Vol. V. and 10 Halsbury's Statutes 903, 905.

5. *[Contracts for supply of road material not to disqualify for election to county council.]*

Construction of
Act.
51 & 52 Vict.
c. 41.

6. Words and expressions to which meanings are assigned by the Local Government Act, 1888, have in this Act the same respective meanings, and in this Act the word "highway" includes any public bridle path or footway.

See the interpretation section, *ante*, p. 4765. The latter part of this section was quite unnecessary, for a public bridle path or footway is as much a highway as a carriage road. See *R. v. Salop County (Inhabitants)* (1810), 13 East, 95; 26 Digest 572, 2633.

THE MORTMAIN AND CHARITABLE USES ACT, 1891.

(54 & 55 VICT. c. 73) (a).

An Act to amend the Mortmain and Charitable Uses Act, 1888, and the Law relating to Mortmain and Charitable Uses. [5th August, 1891.]

Short title.

1. This Act may be cited as "The Mortmain and Charitable Uses Act, 1891."

(a) This Act amends the Mortmain and Charitable Uses Act, 1888, *ante*, p. 4771. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Definition of
"land."

3. "Land" in the Mortmain and Charitable Uses Act, 1888, and in this Act, shall include tenements and hereditaments, corporeal or incorporeal, of any tenure, but not money secured on land or other personal estate arising from or connected with land; *and the definition of land contained in the Mortmain and Charitable Uses Act, 1888, is hereby repealed (a).*

51 & 52 Vict.
c. 42.

(a) This supersedes the definition of "land" in s. 10 of the principal Act, *ante*, p. 4775. Italicised words repealed as spent by S. L. R. A., 1908 (18 Halsbury's Statutes 1175). With regard to money secured on land, it may be noted that corporation debenture stock charged on the revenue of all landed and other property of the corporation was held not to be an interest in land under Charitable Uses Act, 1735, s. 3 (*In re Pickard, Elmsley v. Mitchell*, [1894] 2 Ch. 88). See also *In re Crossley, Birrell v. Greenhough*, [1897] 1 Ch. 928; 61 J. P. 390.

**Note to
Section 8.**

Where real estate has been devised to trustees on trust for sale, and the proceeds directed to be paid to a charity, the charity takes no benefit in anything but personal estate arising from land (*Re Sidebottom, Beeley v. Waterhouse*, [1902] 2 Ch. 389; 8 Digest 267, 291). See also *Re Wilkinson Esam v. Att.-Gen.*, [1902] 1 Ch. 841; 8 Digest 267, 290; and *Re Ryland, Roper v. Ryland*, [1903] 1 Ch. 467; 8 Digest 267, 292.

4. In this Act the word "assurance" shall have the same meaning as in the Mortmain and Charitable Uses Act, 1888. Meaning of "assurance."

5. Land may be assured by will to or for the benefit of any charitable use (a), but, except as hereinafter provided, such land shall, notwithstanding anything in the will contained to the contrary, be sold within one year from the death of the testator, or such extended period as may be determined by the High Court, or any judge thereof sitting at chambers, or by the Charity Commissioners. Land assured by will for a charitable purpose to be sold.

(a) A testator, who died after the passing of this Act, by his will made before the passing of this Act, gave to a charity such part of the residue as may by law be given for charitable purposes, with a separate gift of the remainder to A.:—*Held*, that the Act applied, and in the absence of a contrary intention the whole of the residue, realty as well as personalty, went to the charity (*In re Bridger, Brompton Hospital for Consumption v. Lewis*, [1894] 1 Ch. 297; 8 Digest 283, 584). As to the effect of a special Act on the provision of this section and section 8, *infra*, see *In re Verrall, National Trust for Places of Historic Interest or Natural Beauty v. Att.-Gen.*, [1916] 1 Ch. 100; 80 J. P. 89; 8 Digest 260, 217.

6. So soon as the time limited for the sale of any lands under any such assurance shall have expired without completion of the sale of the land, the land unsold shall vest forthwith in the official trustee of charity lands, and the Charity Commissioners shall take all necessary steps for the sale or completion of the sale of such land to be effected with all reasonable speed by the administering trustees for the time being thereof, and for this purpose the said Commissioners may make any order under their seal directing such trustees to proceed with the sale or completion of the sale of the said land or removing such trustees and appointing others, and may provide by any such order for the payment of the proceeds of sale to the official trustees of charitable funds in trust for the charity, and for the payment of the costs and expenses incurred by the said administering trustees in or connected with such sale, and every such order shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Act, 1853, and the Acts amending the same, respectively, to any orders of the said Commissioners made thereunder. Land after expiration of time limited for sale to be sold by order of Charity Commissioners.

7. Any personal estate by will directed to be laid out in the purchase of and to or for the benefit of any charitable uses shall, except as hereinafter provided, be held to or for the benefit of the charitable uses as though there had been no such direction to lay it out in the purchase of land (a). 16 & 17 Vict. c. 137.
Personal estate by will directed to be laid out in land not to be so laid out.

(a) Where a testator devised and bequeathed residuary estate to purchase land for the erection of model dwellings for the poor, it was held that the effect of striking out the direction to purchase land was not to put an end to the whole charitable trust, and that the residuary gift was valid (*Re Sutton, Lewis v. Sutton*, [1901] 2 Ch. 640; 66 J. P. 39; 8 Digest 274, 420).

A gift by a testatrix of "any little money left" for the repair of a churchyard is a valid bequest, and is not limited to the sum of £500 by the Gifts for Churches Act, 1803 (6 Halsbury's Statutes 681) (*Re Douglas, Douglas v. Simpson*, [1905] 1 Ch. 279; 8 Digest 285, 615).

Section 8.

Power to retain
land in certain
cases.

8. It shall be lawful for the High Court, or any judge thereof sitting at chambers, or for the Charity Commissioners, if satisfied that land assured by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, by order to sanction the retention or acquisition, as the case may be, of such land (a).

(a) On a summons under this section to sanction retention of land for the purposes of a charity after the expiration of a year from the testator's death, the official trustee and not the commissioners should be made a defendant (*Re Church Patronage Trust, Laurie v. Att.-Gen.*, [1904] 1 Ch. 41; 68 J. P. 64). Affirmed on other points, [1904] 2 Ch. 643; 8 Digest 254, 158.

Application of
Act.

9. This Act shall only apply to the will of a testator dying after the passing of this Act.

Saving.

10. Nothing in this Act contained shall limit or affect the exemptions contained in Part III. of the Mortmain and Charitable Uses Act, 1888, or apply to any land or personal estate to be laid out in the purchase of land acquired under any assurance to which such exemptions or any of them apply, or shall exclude or impair any jurisdiction or authority which might otherwise be exercised by a court or judge of competent jurisdiction or by the Charity Commissioners.

THE MORTMAIN AND CHARITABLE USES ACT AMENDMENT ACT, 1892.

(55 & 56 VICT. c. 11) (a).

An Act to amend the Mortmain and Charitable Uses Act, 1888.

[20th June, 1892.]

Extension of
51 & 52 Vict.
c. 42, s. 6.

1. Section six of the Mortmain and Charitable Uses Act, 1888, except so much of sub-section (2) thereof as provides that an assurance by deed, made otherwise than in good faith for full and valuable consideration, must be executed not less than twelve months before the death of the assurator, shall apply to any assurance by deed of land to any local authority for any purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land (b).

(a) This Act amends Mortmain and Charitable Uses Act, 1888, *ante*, p. 4771. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

(b) See the section here referred to, *ante*, p. 4774.

Definitions.

2. For the purpose of this Act "local authority" means any county council, council of a municipal borough, sanitary authority, or any body having power to make a rate for public purposes or by the issue of any precept, certificate or other document to acquire payment from some authority or officer of money which may render necessary the making of any such rate; and "assurance" has the same meaning as in the Mortmain and Charitable Uses Act, 1888.

Extent of Act.

3. This Act shall not apply to Scotland or Ireland.

Short title.

4. This Act may be cited as "The Mortmain and Charitable Uses Act Amendment Act, 1892."

Section 1.

THE TECHNICAL AND INDUSTRIAL INSTITUTIONS
ACT, 1892.

(55 & 56 VICT. c. 29) (a).

An Act to facilitate the Acquisition and Holding of Land by Institutions for Promoting Technical and Industrial Instruction and Training.

[27th June, 1892.]

1. This Act may be cited as “The Technical and Industrial Institutions Act, 1892.” Short title.

(a) As to the omission of the clause of enactment, see s. 4 of S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

2. This Act applies to every institution established, whether before or after the passing of this Act, for effecting all or any of the following purposes, that is to say : Definition of institution.
52 & 53 Vict.
c. 76.

- (i) To give technical instruction within the meaning of the Technical Instruction Act, 1889 (a) ;
- (ii) To provide the training, mental or physical, necessary for the above purpose ;
- (iii) In connection with the purposes before mentioned, to provide workshops, tools, scientific apparatus and plant of all kinds, libraries, reading rooms, halls for lectures, exhibitions, and meetings, gymnasiums, and swimming baths, and also general facilities for mental and physical training, recreation, and amusement, and also all necessary and proper accommodation for persons frequenting the institutions ;

and every such institution is in this Act referred to as the institution.

(a) This must now be construed as a reference to Part VI. of the Education Act, 1921 (7 Halsbury's Statutes 168). See s. 171 (2) of that Act (*op. cit.* 215).

3.—(1) The governing body of the institution may be any body corporate, council, public authority, local authority, commissioners, directors, committee, trustees, or other body of persons, corporate or unincorporate, willing to undertake, or elected or appointed for the purpose of undertaking, or having, the government and management of the institution (a). Governing body.

(2) The governing body may make byelaws and rules for the management and conduct of the institution (b).

(a) Any sanitary authority may be a governing body within the meaning of this definition.

(b) Such byelaws and rules if made by virtue of this Act will not require confirmation by any central authority.

4. The Lands Clauses Consolidation Act, 1845 (a), and the Lands Clauses Consolidation Acts Amendment Act, 1860 (b) (except the provisions of those Acts relating to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by promoters of the undertaking, and with respect to determining the amount of purchase money by valuation of surveyors), are hereby incorporated in this Act. Incorporation of
8 & 9 Vict. c. 18.
23 & 24 Vict.
c. 106.

(a) *Ante*, p. 4104.

(b) *Ante*, p. 4252.

5. The governing body of the institution may by agreement enter on, take, and use any land required by them for the purposes of the institution, and such land may be conveyed either to the governing body or to trustees for the governing body. Power to take
land by
agreement.

Section 6.

Conveyance
may be by way
of sale, ex-
change, or gift.

6—(1) A conveyance of land may be made to the governing body of the institution or to trustees for the governing body either for valuable consideration in money, or in consideration of a rentcharge, or by way of exchange for other land, or, subject as in this Act provided, by way of free gift, and without any consideration (a).

(2) A conveyance under this Act by a person having an equitable estate shall operate to pass any bare outstanding legal estate vested in a trustee.

(a) See *In re Stanley's Trust Deed*, *Stanley v. Att.-Gen.* (1910), 26 T. L. R. 365; 19 Digest 597, 260.

Conveyances by
limited owners.

7.—(1) A conveyance under this Act by a person not entitled to dispose absolutely for his own benefit of the land proposed to be conveyed (other than a conveyance on a sale or exchange for the best consideration in money, or by way of rentcharge, or in land to be reasonably obtained) shall be subject to the following restrictions and provisions :

(a) It shall not in itself, or in addition to any land conveyed under this Act by the same person, comprise more than two acres in the whole in any one county, city, or borough :

(b) It shall be made either with the consent of the person, if any, entitled to the next estate of freehold in remainder for the time being, or with the approval of the High Court of Justice.

(2) Every application to the court for an order approving a conveyance under this Act shall be by summons in chambers, and shall, subject to the Acts regulating the court, be assigned to the Chancery Division.

(3) On any such application the court may direct notice to be served on such persons, if any, as it thinks fit.

(4) On any such application the court shall have regard to the circumstances of the settled estate, the wants of the neighbourhood and the interests of the persons entitled in remainder, and the court, if it thinks fit under all the circumstances of the case, may make an order approving the proposed conveyance. Such order, if the court thinks fit, may be made on such terms and conditions, if any, as the court thinks proper ; but no such order shall be made if the application is opposed by any person entitled in remainder, unless the court is of opinion that the opposition is unreasonable, or the interest of the person opposing so remote that it may properly be disregarded.

Institution to
be public.

8. Every institution for which land has been acquired under an exercise of the powers conferred by this Act shall be open generally either to all persons or to all persons within specified limits as to age, qualification, or otherwise, and either without payment or on specified terms as to times of attendance and payment of subscriptions or fees, or otherwise, but so that no preference be given to any person or class of persons within the specified limits.

Site may be
sold or
exchanged.

9.—(1) Land acquired under the powers of this Act shall not be used otherwise than for the purposes of an institution within the meaning of this Act, but, with the consent of the Charity Commissioners, may be sold or may be exchanged for other land.

(2) The governing body or their trustees may execute conveyances and do all acts necessary to effectuate the sale or exchange.

(3) On a sale, the receipt of the governing body or of the trustees for the governing body shall be sufficient discharge for the purchase money, and such money shall, as soon as convenient, be invested in the purchase of other land.

(4) Land purchased or taken in exchange under this section shall be devoted to the same purposes and be liable to the same incidents as originally were applicable to or affected the land sold or given in exchange.

(5) Money arising by sale may, until reinvested in the purchase of land be invested in the names of the governing body or of trustees for the governing body in any manner in which trust money is for the time being by law authorised to be invested; and all dividends and income on investments so made and all the resulting income shall be invested in like manner so as to accumulate in the way of compound interest, and be added to capital until the capital is reinvested in the purchase of land.

Section 9.

10.—(1) Parts I. and II. of the Mortmain and Charitable Uses Act, 1888, and so much of the Mortmain and Charitable Uses Act, 1891 (a), as requires that land assured by will shall be sold within one year from the death of the testator, shall not apply to conveyances or to assurances by will made under or for the purposes of this Act, . . . (b).

(2) Any corporate body may acquire and shall be entitled to hold and retain land for the purposes of this Act without any licence in mortmain.

(a) *Ante*, pp. 4771, 4772, 4834.

(b) Words omitted here were repealed by the Education Act, 1918 (7 Halsbury's Statutes 128), but see now generally as to assurances for educational purposes s. 117 of the Education Act, 1921 (*op. cit.* 193).

11. This Act shall not extend to Scotland.

Extent of Act.

THE FORGED TRANSFERS ACT, 1892.

(55 & 56 VICT. c. 36) (a).

An Act to remove doubts as to the meaning of the Forged Transfers Act, 1891
[27th June, 1892].

1. This Act may be cited as "The Forged Transfers Act, 1892," and this Act and the Forged Transfers Act, 1891, may be cited together as the Forged Transfers Acts, 1891 and 1892.

Short title.

(a) This Act amends the Forged Transfers Act, 1891, *ante*, p. 4831. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

54 & 55 Vict.
c. 43.

2. *Whereas* (a) . . .

The Forged Transfers Act, 1891, shall have effect as if at the end of sub-section one of section one of that Act, there were added the words "whether such loss arises, and whether the transfer or power of attorney was forged before or after the passing of this Act, and whether the person receiving such compensation, or any person through whom he claims, has or has not paid any fee or otherwise contributed to any fund out of which the compensation is paid."

Removal of
doubt as to the
operation of
54 & 55 Vict.
c. 43.

(a) The preamble to this section (repealed by the S. L. R. A., 1908 (*op. cit.* 1175), after referring to s. 1 (1) of the Forged Transfers Act, 1891, *ante*, p. 4831, recited that it was expedient to remove doubts as to the application of that Act to losses and forgeries before its passing.

3. Sub-section two of section one of the said Act shall be read as if, after the words "on any one hundred pounds transferred," were inserted the words "with a minimum charge equal to that for twenty-five pounds."

Amendment of
54 & 55 Vict.
c. 43, s. 1 (2).

4. Where the shares, stock, or securities of a company or local authority have by amalgamation or otherwise become the shares, stock, or securities of another company or local authority, the last-mentioned company and authority shall have the same power under the Forged Transfers Act, 1891, and this Act, as the original company or authority would have had if it had continued.

Provision where
one company
takes over
shares, etc.,
of another
company.

Section 1

THE RAILWAY AND CANAL TRAFFIC ACT, 1892.

(55 & 56 VICT. c. 44) (a).

An Act to amend the Railway and Canal Traffic Act, 1888.

[27th June, 1892.]

51 & 52 Vict.
c. 25.

Whereas by section twenty-four of the Railway and Canal Traffic Act, 1888, it is provided that after the commencement of the session of Parliament next after that in which the report of the Board of Trade with respect to a classification of traffic and schedule of rates and charges has been submitted to Parliament, the Board of Trade may embody in a provisional order such classification and schedule as in the opinion of the Board of Trade ought to be adopted, and procure a Bill to be introduced to confirm the order, and it is expedient to amend this provision :

Time for
application for
provisional
order.

1. A provisional order in pursuance of sub-section seven of section twenty-four of the Railway and Canal Traffic Act, 1888, may be made, and a Bill to confirm the same may be introduced at any time after hearing the parties as provided in sub-section four of the said section.

(a) This Act amends the Railway and Canal Traffic Act, 1888, s. 24 (7). See the note to that section, *ante*, p. 4710, where the effect of the amendment is stated. As to the omission of the clause of enactment, see s. 4 of S. L. R. A., 1894 (18 Halsbury's Statutes 1020). Preamble repealed by S. L. R. A., 1908 (*op. cit.* 1175).

Short title.

2. This Act may be cited as "The Railway and Canal Traffic Act, 1892."

THE PUBLIC LIBRARIES ACT, 1892.

(55 & 56 VICT. c. 53) (a).

An Act to consolidate and amend the Law relating to Public Libraries.

[27th June, 1892.]

ADOPTION OF ACT AND CONSTITUTION OF LIBRARY AUTHORITY.

Extent and
application of
Act.

1.—(1) This Act shall extend to every library district for which it is adopted.

(2) For the purposes of this Act and subject to the provisions thereof every urban district (b) and every parish in England and Wales which is not within an urban district shall be a library district (c).

(a) This Act repeals and consolidates all the previous Acts relating to public libraries, a list of which will be found in the Second Schedule. As to the omission of the clause of enactment, see preceding note. This Act has been amended by the Public Libraries (Amendment) Act, 1893, the Public Libraries Act, 1901, and the Public Libraries Act, 1919, *post*, pp. 4871, 4995 and 5238. See also the Libraries Offences Act, 1898, *post*, p. 4948.

(b) See the definition of an urban district in s. 27, *post*, p. 4847.

(c) The next sub-section is repealed by s. 89 of the L. G. A., 1894 (10 Halsbury's Statutes 827). See s. 7 of that Act, *post*, p. 4895.

Limitations on
expenditure for
purposes of Act.

2.—(1) A rate or addition to a rate shall not be levied for the purposes of this Act for any one financial year (a) in any library district to an amount exceeding one penny in the pound (b).

(2) This Act may be adopted for any library district subject to a condition that the maximum rate or addition to a rate to be levied for the purposes of this Act in the district or in any defined portion of the district in any one financial year shall not exceed one halfpenny or shall not exceed three farthings

in the pound, but such limitation if fixed at one halfpenny may be subsequently raised to three farthings, or altogether removed, or where it is for the time being fixed at three farthings may be removed.

Section 2.

(a) This means the period of twelve months for which the accounts of the authority are made up. See s. 27, *post*, p. 4847.

(b) This section has now ceased to have effect, see s. 4 of the Act of 1919, *post*, p. 5240.

3 (a). [*Proceedings for adoption of Act.*]

(a) This section was repealed so far as it relates to urban districts by s. 2 (2) of the Act of 1893, *post*, p. 4871. Section 3 of that Act which prescribed the procedure to be adopted in urban districts was in turn repealed by s. 7 of the 1919 Act, *post*, p. 5241, which provides that any resolution passed in accordance with the ordinary procedure of the council concerned shall have full effect for purposes of the Act of 1893, *post*, p. 4871.

4. This Act when adopted for any library district shall be carried into execution, if the library district is an urban district, by the urban authority and, if it is a parish, by the commissioners appointed under this Act (a); and any such authority or commissioners executing this Act are hereinafter referred to as a "library authority" (b).

Act when adopted to be executed by library authority.

(a) If there is a parish council for the parish, the authority for the execution of the Act is now that council (see the L. G. A., 1894, s. 7 (5), (7), *post*, p. 4895; see also s. 53, *post*, p. 4913). If there is no parish council, it is still commissioners appointed under this Act, but appointed by the parish meeting under L. G. A., 1894, s. 19 (4), instead of by the vestry. The first thing the library authority has to do is to send notice of the adoption of the Act to the Ministry of Health and Board of Education. See the Public Libraries Act, 1901, s. 8, *post*, p. 4997, and M. of H. (Public Libraries, etc.) Order, 1920, *ante*, p. 3186.

(b) In every rural parish the parish meeting have had since 1894, exclusively, the power of adopting this Act. See s. 7 (1) of the L. G. A., 1894, *post*, p. 4895. But see now the Act of 1919, *post*, p. 5238, under which the County Council may adopt the Libraries Acts for the areas within the county not included in any existing library area.

5.—(1) Where this Act is adopted for any parish the vestry shall forthwith appoint not less than three nor more than nine voters in the parish to be commissioners for carrying this Act into execution (a).

Constitution of commissioners for executing Act in parish.

(2) The commissioners shall be a body corporate by the name of "The Commissioners for Public Libraries and Museums for the parish of _____, in the county of _____," and shall have perpetual succession and a common seal, with power to acquire and hold lands for the purposes of this Act, without any licence in mortmain (b).

(a) This sub-section only applies in parishes not having a parish council. As to the qualification of commissioners, see now s. 2 of the L. G. A., 1894 (10 Halsbury's Statutes 774), as amended by the Representation of the People Acts.

(b) The parish council will be a body corporate, with power to hold lands for the purposes of this Act without a licence in mortmain (see the L. G. A., 1933, s. 48 (2), *ante*, p. 782). As to parishes without a parish council, see *ibid.*, s. 47 (3), *ante*, p. 781.

6.—(1) The commissioners shall, as soon as conveniently may be after their appointment, divide themselves by agreement, or in default of agreement by ballot, into three classes, one-third or as nearly as may be one-third of them being in each class.

Rotation of commissioners

(2) The offices of the first class shall be vacated at the expiration of one year, the offices of the second class at the expiration of two years, and the offices of the third class at the expiration of three years from the time of appointment.

(3) The offices of vacating commissioners shall be filled by an equal number of new commissioners to be appointed by the vestry from among the voters in the parish; and every newly elected commissioner shall hold his office for the term of three years from the date when the office became vacant, and

Section 6. no longer, unless re-elected ; but a person, on ceasing to be a commissioner, shall, unless disqualified, be re-eligible.

(4) Any casual vacancy among the commissioners, whether arising by death, resignation, incapacity, or otherwise, shall as soon as may be after the occurrence thereof be filled up by the vestry ; but the term of office of a commissioner appointed to fill up a casual vacancy shall expire at the date at which the term of office of the commissioner in whose place he is appointed would have expired (a).

(a) This section is now applicable only in parishes not having a parish council.

Meetings of
commissioners.

7. *The commissioners shall meet at least once in every month, and at such other times as they shall think fit, at some convenient place ; and any one commissioner may summon a special meeting by giving three clear days' notice in writing to each commissioner, specifying therein the purpose for which the meeting is called. Business shall not be transacted at any meeting of the commissioners unless at least two of them are present (a).*

(a) Ss. 7, 8, have been repealed, except as to London and except as to commissioners appointed under the Act, by the L. G. A., 1933 ; see now *ibid.*, Sched. III., *ante*, p. 1231.

Proceedings of
commissioners
to be recorded.

8. *All orders and proceedings of the commissioners shall be entered in books to be kept for that purpose, and shall be signed by the commissioners or any two of them ; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any judicial proceeding (a).*

(a) See note (a) to s. 7, *supra*.

Power to
vestries of
neighbouring
parishes to
combine (a)

9.—(1) Where this Act is adopted for any two or more neighbouring parishes, the vestries of those parishes may by agreement (b) combine for any period in carrying this Act into execution, and the expenses of carrying this Act into execution shall be defrayed by the parishes in such proportions as may be agreed on by the vestries.

(2) The vestry of each of the said parishes shall appoint not more than six commissioners in accordance with the provisions of this Act and the commissioners so appointed for the several parishes shall form one body of commissioners, and shall act accordingly in the execution of this Act (c).

(a) As to the combination of urban districts, see the Public Libraries (Amendment) Act, 1893, s. 4, *post*, p. 4872.

(b) The vestries were not corporate bodies, and the only evidence of an agreement between them would be the resolutions appearing on the minutes, but parish councils are corporate bodies and can enter into formal agreements.

(c) See now the L. G. A., 1894, s. 53 (2), *post*, p. 4913, as to the compulsory transfer of the powers and duties of any commissioners appointed under this sub-section.

Power to annex
parish to adjoining
district.

10. Where the voters in a parish adjoining or near any library district for which either this Act has been adopted, or the adoption thereof is contemplated, consent to such parish being annexed to the said district, such parish, subject to the consent of the library authority of the said district being also given, shall be annexed to and form part of that district for the purposes of this Act ; the vestry of such parish shall appoint not more than six commissioners in accordance with the provisions of this Act, and the commissioners so from time to time appointed shall during their respective terms of office be deemed for all the purposes of this Act to be members of the library authority of the said district.

Provision of
libraries,
museums, and
schools of
science and art.

EXECUTION OF ACT.

11.—(1) The library authority of any library district for which this Act has been adopted may, subject to the provisions of this Act, provide all

or any of the following institutions, namely, public libraries, public museums, schools for science, art galleries, and schools for art, and for that purpose may purchase and hire land, and erect, take down, rebuild, alter, repair, and extend buildings, and fit up, furnish, and supply the same with all requisite furniture, fittings, and conveniences (a). **Section 11.**

(2) Where any of the institutions mentioned in this section has been established either before or after the passing of this Act by any library authority under this Act or the Acts hereby repealed, that authority may establish in connexion therewith any other of the said institutions without further proceedings being taken with respect to the adoption of this Act.

(3) No charge shall be made for admission to a library or museum provided under this Act for any library district, or, in the case of a lending library, for the use thereof by the inhabitants of the district; but the library authority, if they think fit, may grant the use of a lending library to persons not being inhabitants of the district, either gratuitously or for payment.

(a) It is now provided by the Act of 1919, s. 8, *post*, p. 5241, that the powers of providing schools for science and schools of art conferred by this section shall cease, without prejudice, however, to the power of maintaining any such school established under this section before the passing of the Act of 1919, *post*, p. 5238. A free library, established by a library authority under this Act, is a building which is the property of a literary or scientific institution within r. VI. of Sched. (G) of Income Tax Act, 1842, and is, therefore, exempt from assessment to income tax under Sched. A. (9 Halsbury's Statutes 532) (*Manchester Corporation v. McAdam*, [1896] A. C. 500; 61 J. P. 100; 28 Digest 14, 66, practically overruling *Andrews v. Bristol Corporation* (1892), 56 J. P. 615; 61 L. J. Q. B. 715; 28 Digest 13, 65).

A museum provided under this Act in an urban district may be appropriated under Public Libraries Act, 1901, s. 7, *post*, p. 4997, for the purposes of the Museums and Gymnasiums Act, 1891, *ante*, p. 4827, thus relieving the library rate from the expense of maintaining it.

The council of a metropolitan borough in which this Act was in force in the course of demolishing some old premises, for the purpose of erecting a free library, made a hole in the wall of an adjoining owner's premises and did damage. In an action for damages brought by the adjoining owner it was held that the Public Authorities Protection Act, 1893, did not apply (*Walsh v. Southwark Borough Council* (1908), 72 J. P. 71; 38 Digest 108, 776).

12.—(1) For the purpose of the purchase of land under this Act by a library authority the Lands Clauses Acts (a), with the exception of the provisions relating to the purchase of land otherwise than by agreement, shall be incorporated with this Act. Provision as to acquisition and disposal of land.

(2) The library authority of any library district which is an urban district may with the sanction of the Local Government Board (b) appropriate for the purposes of this Act any land which is vested in that authority (c).

(3) A library authority may with the sanction of the Local Government Board (d) sell any land vested in them for the purposes of this Act, or exchange any such land for other land better adapted for those purposes, and the money arising from the sale or received by way of equality of exchange shall be applied in or towards the purchase of other land better adapted for the said purposes, or may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board (d).

(4) A library authority may let a house or building, or any part thereof, or any land vested in them for the purposes of the Act, which is not at the time of such letting required for those purposes, and shall apply the rents and profits thereof for the purposes of this Act (e).

(a) Lands Clauses Consolidation Act, 1845, *ante*, p. 4104; Lands Clauses Consolidation Acts Amendment Act, 1860, *ante*, p. 4252; Lands Clauses (Umpire) Act, 1883, *ante*, p. 4664. The exception of the provisions relating to the purchase of land otherwise than by agreement, leaves the authority without power to give compensation for injuriously affecting lands. See *Ferrar v. London Commissioners of Sewers* (1869), L. R. 4 Exch. 227;

**Note to
Section 12.**

11 Digest 134, 211. As to disregard of restrictive covenants, see *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 60 J. P. 182; 11 Digest 145, 297.

(b) The powers of the L. G. B. were transferred to the Minister of Health, and are now vested in the Board of Education by the Order in Council of the 17th May, 1920, *ante*, p. 3186. The O. in C. itself should be consulted, in connection with this and the following notes.

(c) And see *Att.-Gen. v. Corporation of Sunderland*, *ante*, p. 4453.

(d) The powers of the L. G. B. under this sub-section were transferred to the Board of Education by Order in Council of 17 May, 1920, *ante*, p. 3186.

(e) The powers granted by this sub-section are ancillary to and not in contradiction of the powers conferred by the preceding sub-section. The object of the sub-section is to confer on a library authority the right to let for temporary purposes land which is not at the time of the letting required for library purposes.

Where a local authority appropriated premises provided for library purposes for administrative purposes without the consent of the Board of Education an injunction was granted at the suit of the Attorney-General (*Att.-Gen. v. Westminster City Council*, [1924] 2 Ch. 416; 88 J. P. 145; 38 Digest 227, 586).

Power to grant
charity land
for purposes of
this Act.

13.—(1) Any person holding land for ecclesiastical, parochial, or charitable purposes may, subject as hereinafter provided, grant, or convey, by way of gift, sale, or exchange, for any of the purposes of this Act any quantity of such land, not exceeding in any one case one acre, in any manner vested in such person.

(2) Provided that—

- (a) ecclesiastical property shall not be granted or conveyed for those purposes without the consent of the Ecclesiastical Commissioners; and
- (b) parochial property shall not be so granted or conveyed *save by the board of guardians of the poor law union comprising the parish to which the property belongs*, or without the consent of the Local Government Board (a); and
- (c) other charitable property shall not be so granted or conveyed without the consent of the Charity Commissioners; and
- (d) the land taken in exchange or the money received for such sale shall be held on the same trusts as the land exchanged or sold; and
- (e) land situated in the administrative county of London, or in any urban district containing according to the last published census for the time being over twenty thousand inhabitants, which is held on trusts to be preserved as an open space, or on trusts which prohibit building thereon, shall not be granted or conveyed for the purposes of this Act.

(3) Any land granted or conveyed to any library authority under this section may be held by that authority without any licence in mortmain.

(a) Words in italics repealed by Sched. XII., Pt. VII., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 1019. As to the transfer of parish property vested in boards of guardians at April 1st, 1930, see L. G. A., 1929, s. 115, Vol. V. and 10 Halsbury's Statutes 956, and as to dealing with such property after that date, see Sched. VII., Vol. V. and 10 Halsbury's Statutes 987. The consent of the M. of H. must still be obtained under the provision in the text.

Vesting of pro-
perty in library
authority.

14.—All land appropriated, purchased, or rented, and all other real and personal property presented to or purchased or acquired for any library, museum, art gallery, or school under this Act shall be vested in the library authority.

Management of
libraries, etc.
by library
authority or
committee.

15.—(1) The general management, regulation, and control (a) of every library, museum, art gallery, and school provided under this Act shall be vested in and exercised by the library authority, and that authority may provide therein books, newspapers, maps, and specimens of art and science, and cause the same to be bound and repaired when necessary.

(2) The library authority may also *appoint salaried officers and servants, and dismiss them*, and (b) make regulations for the safety and use of every library, museum, gallery, and school under their control, and for the admission of the public thereto.

(3) Provided that a library authority being an urban authority may if they think fit appoint a committee and delegate to it all or any of their powers and duties under this section, and the said committee shall to the extent of such delegation be deemed to be the library authority. Persons appointed to be members of the committee need not be members of the urban authority (c). Section 15.

(a) As to offences, see the Libraries Offences Act, 1898, *post*, p. 4948. As to making byelaws, see the Public Libraries Act, 1901, s. 3, *post*, p. 4996.

(b) Words in italics repealed by the L. G. A., 1933, *ante*, p. 735, except so far as relates to parish councils and to commissioners appointed under the Act.

(c) No qualification is prescribed for these persons. Delegation does not relieve the urban authority from their liability for negligence on the part of those having control of the library (*Bungary v. Wellingborough U. C.* (1903), 67 J. P. N. 304).

16.—(1) (a).

(2) The library authority of any library district may with the consent of the voters (b) in the district and of the Charity Commissioners make the like agreement with the governing body of any library established or maintained out of the funds subject to the jurisdiction of the Charity Commissioners, and situate in or near the library district, and, in case of inability, objection, or failure on the part of the governing body to enter into such agreement, the Charity Commissioners may, if they think fit, become party to the agreement on behalf of the governing body.

(3) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery, or school for art in like manner as to a library.

(a) This sub-section is repealed by Public Libraries Act, 1901, s. 14, and Sched., *post*, p. 4998, and s. 5 of that Act, *post*, p. 4996, now makes other provision for library authorities to share the cost of a library by agreement.

(b) In an urban district no consent of the voters is now required (Public Libraries Amendment) Act, 1893, s. 2, *post*, p. 4871).

Power to library authorities to make agreement for use of library.

17. Where a library authority accept a grant out of money provided by Parliament from the Department of Science and Art towards the purchase of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of a teacher in any such school, or towards the furnishing of any such school, that authority may accept the grant upon the conditions prescribed by the Department of Science and Art, and may execute any instruments required by that Department for carrying into effect those conditions, and upon payment of the grant shall be bound by such conditions and instruments, and have power and be bound to fulfil and observe the same (a).

Power to library authority to accept parliamentary grant.

(a) See note (a) to s. 11, *ante*, p. 4843.

FINANCIAL PROVISIONS.

18.—(1) . . . (a).

Expenses of library authority, how defrayed.

(3) Where a parish or a part of a parish is annexed in pursuance of this Act to any library district, so much of the said expenses as is chargeable to such parish or part shall be defrayed in like manner as if such parish or part were a separate library district (b).

(a) Sub-s. (1) was repealed, except as to London, by the L. G. A., 1933, *ante*, p. 735.

(b) The remainder of this sub-section is repealed by Public Libraries Act, 1901, s. 14, and Sched., *post*, p. 4998.

Section 19.

Borrowing by
library
authority.

38 & 39 Vict.
c. 55.

38 & 39 Vict.
c. 89.

19.—(1) Every library authority, with the sanction of the Local Government Board (a), and in the case of a library authority being commissioners appointed for a parish, with the sanction also of the vestry (b) of such parish, may borrow money for the purposes of this Act *on the security of any fund or rate applicable for those purposes* (c).

(2) . . . (d).

(3) The Public Works Loan Commissioners may in manner provided by the Public Works Loans Act, 1875 (e), lend any money which may be borrowed by a library authority for the purposes of this Act.

(a) Now the M. of H.

(b) See s. 6 and note (a) thereto, *ante*, p. 4841, as to substituting the consent of the parish meeting. As to borrowing by a parish council, see L. G. A., 1933, s. 195, *ante*, p. 1023, and note (k) on p. 1030, *ante*. As to borrowing by a County Council, see *ibid*.

(c) Words in italics repealed by the L. G. A., 1933, *ante*, p. 735, except so far as relates to commissioners appointed under the Act or as to London.

(d) Sub-section repealed by L. G. A., 1933, except as in last note.

(e) See that Act, *ante*, p. 4530.

Accounts and
audit.

20.—(1) Separate accounts shall be kept of the receipts and expenditure under this Act of every library authority and their officers, *and those accounts shall be audited in like manner and with the like incidents and consequences, in the case of a library authority being an urban authority, and of their officers, as the accounts of the receipts and expenditure of that authority and their officers under the Public Health Acts* (a).

(2) The accounts of the receipts and expenditure of a library authority being commissioners appointed under this Act, and of their officers, shall be audited yearly by a district auditor *in like manner and with the like incidents and consequences as in the case of an audit under the Acts relating to the relief of the poor, and those commissioners shall be a local authority within the meaning of the District Auditors Act, 1879* (a).

(3) *The accounts of the receipts and expenditure under this Act of any library authority other than the council of a municipal borough shall be open at all reasonable times to the inspection, free of charge, of any ratepayer in the library district, and any such ratepayer may without charge make copies of and extracts from those accounts; and if any library authority or any person being a member thereof or employed by them and having the custody of the accounts fails to allow the accounts to be inspected, or copies or extracts to be made, as required by this section, such authority or person shall for each offence be liable on summary conviction in manner provided by the Summary Jurisdiction Acts to a fine not exceeding five pounds.*

(a) Words in italics repealed by the L. G. A., 1933, *ante*, p. 735, except so far as relates to commissioners appointed under the Act or as to London.

PROVISIONS AFFECTING LONDON ONLY.

Application of
Act to city of
London.

21.—(1) The city of London shall be a library district, and on this Act being adopted for the city, the common council shall be the library authority.

(2) The opinion of the voters in the city of London with respect to any question under this Act shall be ascertained by the mayor on the requisition of the common council.

(3) The expenses incurred in the city of London in and incidental to the execution of this Act, including all expenses in connexion with ascertaining the opinion of the voters, shall be defrayed out of the consolidated rate levied by the commissioners of sewers, or a separate rate to be made, assessed, and levied by those commissioners in like manner as the consolidated rate.

(4) *So much of this Act as limits the rate or addition to a rate to be levied in any library district for any one financial year to one penny in the pound shall not extend to the city of London (a).* Section 21.

(a) This sub-section was repealed by the Act of 1919, *post*, p. 5238.

22. [Power for district in London to adopt Act] (a).

(a) This section was repealed by the London G. A., 1899, s. 35 (2), and Third Schedule. See now ss. 4 and 34 of that Act (11 Halsbury's Statutes 1227, 1241) as to the adoption of this Act in a metropolitan borough.

23. The vestry or district board constituted under the Metropolis Management Act, 1855, for any parish mentioned in Schedule A. or district mentioned in Schedule B. to that Act, as amended by any subsequent Acts, may, if this Act is in force in such parish or district, appropriate with the sanction of the Local Government Board (a) for the purposes of this Act any land which is vested in such vestry or board.

Power to vestry or district board in London to appropriate land for library, etc.

(a) Now the M. of H.

SUPPLEMENTAL PROVISIONS.

24. Any agreement under this Act between two or more vestries or library authorities, or between a library authority and any other body, may provide that on the termination of the agreement an adjustment shall be made of the interests of the several parties thereto in any property to the provision of which they have contributed, and as to the mode in which the adjustment shall be arrived at, and in the event of any dispute the adjustment shall on the application of any of the parties be made by an arbitrator appointed by the Local Government Board (a).

Adjustment of interest on termination of agreement.

(a) Now the M. of H.

25. Nothing in this Act shall interfere with the operation of the Act of the session of the twenty-eighth and twenty-ninth years of the reign of her present Majesty, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in Oxford.

Saving for Oxford.

26. For the purposes of this Act the vestry of a parish shall be any body of persons acting by virtue of any Act of Parliament as or instead of a vestry, and, where there is no such body, shall be the inhabitants of the parish in vestry assembled, but in the latter case the persons registered as county electors in respect of the occupation of property situate in the parish, and no other persons, shall be members of the vestry.

Constitution and proceedings of vestry for purposes of Act.

27. In this Act, unless the context otherwise requires, —

The expression "urban district" means a municipal borough, Improvement Act district, or local government district; and "urban authority" means, as regards each such district, the council improvement commissioners, or local board:

Definitions

The expression "financial year" means the period of twelve months for which the accounts of a library authority are made up (a):

The expression "overseers" includes any persons authorised and required to make and levy poor rates in a parish, and acting instead of overseers (b):

The expression "common council" means in relation to the city of London the mayor, commonalty, and citizens, acting by the mayor, aldermen, and commons in common council assembled.

(a) The definition of a voter here following was repealed by the Public Libraries Act, 1901, s. 14, and Sched., *post*, p. 4998, and is now supplied by s. 9 of that Act, *post*, p. 4997.

(b) Overseers were abolished by the R. and V. Act, 1925, s. 62, *ante*, p. 2222. All rates are now levied by the rating authority.

Section 28. **28.**—(1) (a) *The Acts mentioned in the Second Schedule to this Act shall be repealed as from the commencement of this Act, save so far as any of them extend beyond England and Wales ; and where those Acts have been adopted for any library district, that adoption shall be deemed to have been an adoption of this Act, and this Act shall apply accordingly.*

Repeal.

(2) (a) *For the purpose of this section the said Acts shall be deemed to have been adopted for any district in which they were in force immediately before the commencement of this Act.*

(a) Repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

Saving as any local Act.

29. Nothing in this Act shall be deemed to limit, or to reduce or alter the limit of any rate which any library authority is authorised to levy under or by virtue of any local Act.

30. [*Commencement of Act, October 1, 1892.*] (a)

(a) Repealed by S. L. R. A., 1908.

Short title.

31. This Act may be cited as "The Public Libraries Act, 1892."

SCHEDULES.

Section 3.

FIRST SCHEDULE (a).

(a) This schedule ("Regulations for ascertaining the opinion of the voters in a library district") was repealed, so far as it applied to rural parishes, by the L. G. A., 1894, s. 89. So far as it applied to urban parishes, it became practically obsolete in 1893, for the Public Libraries (Amendment) Act, 1893, s. 2, *post*, p. 4871, substituted the consent of the urban authority for the consent of the voters. It remained, however, in force in the Metropolis until it was finally repealed by the Public Libraries Act, 1901, *post*, p. 4995. And see now the Act of 1919, s. 7, *post*, p. 5241.

Section 28.

SECOND SCHEDULE (a).

(a) This Schedule of Acts repealed (itself repealed by the S. L. R. A., 1908 ; 18 Halsbury's Statutes 1175) included the following Public Libraries Acts and Amendment Acts, —1855, 1866, 1871, 1884, 1887, 1889, and 1890.

THE PRIVATE STREET WORKS ACT, 1892.

(55 & 56 VICT. c. 57.)

An Act to amend the Public Health Acts in relation to Private Street Improvement Expenses. [28th June 1892.]

Short title, construction and extent.

1. This Act may be cited as the Private Street Works Act, 1892, and shall be construed as one with the Public Health Acts, and shall extend only to England ; and this Act and the Public Health Acts may be cited together as the Public Health Acts.

Rural districts.

The Act is now applied to all rural districts by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, which provides that the county council shall have the functions of an urban authority under this Act with respect to such parts of the county as are for the time being comprised in any rural district (*ibid.*, s. 30 (2) and Sched. I., Vol. V. and 10 Halsbury's Statutes 904, 975).

In the application of the Act to county councils, the county surveyor when preparing the specification under s. 6 (2), *post*, p. 4852, must, if and so far as the works include sewers, consult the rural district council who remain the sanitary authority.

Any rural district council to which this Act or s. 150 of the P. H. A., 1875, *ante*, p. 4388, has been applied by an order of the L. G. B. or M. of H. can no longer function under either of those enactments (s. 30 (3), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904).

Under s. 35, *ibid.*, Vol. V. and 10 Halsbury's Statutes 910, a county council has power to delegate its functions with respect to county roads to a district council, and where any such functions have been delegated under s. 35, then so long as the delegation is in force, the district council is to discharge, as agents for the county council, the functions of that council *within the district* under the enactments (including this Act) mentioned in Sched. I., Pts. I. and III., *ibid.*, Vol. V. and 10 Halsbury's Statutes 975, 977, except so far as they relate to "roads" in respect of which functions are not delegated (s. 36 (2), *ibid.*, Vol. V. and 10 Halsbury's Statutes 912). Functions under this Act cannot be exercised in relation to a "road" which as defined by the Act (s. 134, *ibid.*, Vol. V. and 10 Halsbury's Statutes 971) means a highway repairable by the inhabitants at large. Where, therefore, any functions are delegated to a rural district council, the council will, subject to the terms of the delegation, be entitled to function under this Act *within their district* without the necessity for an Order under s. 4, *post*, p. 4850, since the council will be acting as agents for the county council and will be exercising the functions of that authority. The surveyor of the district council to whom functions are delegated is to be the surveyor for the purposes of this Act (s. 36 (2) (a), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 912), and the district council may themselves contribute to the expenses and for that purpose raise money (s. 36 (2) (b), *ibid.*).

When this Act is adopted by an urban authority it takes the place of ss. 150—152 of the P. H. A., 1875, *ante*, pp. 4388—4425, and s. 41 of the P. H. A. Amendment A., 1890, *ante*, p. 4815 (see s. 25, *post*, p. 4869). The position of urban districts is not affected by the L. G. A., 1929, so far as this Act is concerned.

As to the Acts comprised under the title "Public Health Acts," see the Short Titles Act, 1896 (18 Halsbury's Statutes 1021), and the P. H. A., 1925, s. 1 (2), Vol. V. and 13 Halsbury's Statutes 1115.

"England" includes Wales and Berwick-on-Tweed (Wales and Berwick Act, 1746, s. 3; 18 Halsbury's Statutes 969).

2. This Act shall extend and apply to any urban sanitary district in which it is respectively adopted under the provisions of this Act. Adoption of Act.

An adoption of the Act would seem to be irrevocable: see also s. 25 and note thereto, *post*, p. 4869. As to the mode of adoption, see the next section.

3. The following provisions shall have effect with regard to the adoption of this Act by urban authorities: Adoption of Act by urban authorities.

(1) The adoption shall be by a resolution passed at a meeting of the urban authority; and one calendar month at least before such meeting special notice of the meeting, and of the intention to propose such resolution, shall be given to every member of the authority, and the notice shall be deemed to have been duly given to a member of it if it is either—

- (a) Given in the mode in which notices to attend meetings of the authority are usually given (a); or
- (b) Where there is no such mode, then signed by the clerk of the authority, and delivered to the member or left at his usual or last known place of abode in England, or forwarded by post in a prepaid registered letter, addressed to the member at his usual or last known place of abode in England.

(a) See P. H. A. Amendment A., 1890, s. 3, *ante*, p. 4801. For a form of notice of intention to move the adoption of the Act, see the Encyclopædia of Forms and Precedents, Vol. XII., p. 561. See also forms of notice of meeting and of resolution of adoption, *ibid.*, pp. 562, 563.

Section 3.

(2) Such resolution shall be published by advertisement in some one or more newspapers circulating within the district of the authority, and by causing notice thereof to be affixed to the principal doors of every church and chapel (a) in the place to which notices are usually fixed, and otherwise in such manner as the authority think sufficient for giving notice thereof to all persons interested, and shall come into operation at such time not less than one month (b) after the first publication of the advertisement of the resolution as the authority may by the resolution fix, and upon its coming into operation this Act shall extend to that district.

Compare the similar provisions in P. H. A. Amendment A., 1890, s. 3, *ante*, p. 4801. A form of notice of the resolution for publication will be found in Vol. XII. of the Encyclopedia of Forms and Precedents, at p. 563.

(a) The churches and chapels above referred to are those of the Established Church only. See cases in note to the P. H. A. Amendment A., 1890, s. 3 (4), *ante*, p. 4802.

(b) "Month" means "calendar month" (Interpretation Act, 1889, s. 3; 18 Halsbury's Statutes 993). If, therefore, the date, fixed by a resolution of adoption for the Act to take effect, is less than one calendar month from the date of the resolution, it will be necessary for proceedings to be begun afresh.

(3) A copy of the resolution shall be sent to the Local Government Board.

For L. G. B. read now the Ministry of Health.

(4) A copy of the advertisement shall be conclusive evidence of the resolution having been passed, unless the contrary be shown; and no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, shall be made after three months from the date of the first publication of the advertisement.

Local
Government
Board may
extend Act
to rural
districts.

4. The Local Government Board may declare that the provisions contained in this Act shall be in force in any rural sanitary district, or any part thereof, and may invest a rural sanitary authority with the powers, rights, duties, capacities, liabilities, and obligations which an urban authority may acquire by adoption of this Act, in like manner and subject to the same provisions as they are enabled to invest rural sanitary authorities with the powers of urban sanitary authorities under the provisions of section two hundred and seventy-six of the Public Health Act, 1875.

The Act is now in force in all rural districts by reason of its application to county councils in such districts by s. 30 (2) and Sched. I. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, 975. Any orders made under the section in the text are now inoperative (s. 30 (3), *ibid.*).

As to the operation of the Act in rural districts, see the note to s. 1, *ante*, p. 4848.

Interpreta-
tion.

5. In this Act, if not inconsistent with the context—

The expression "urban authority" means an urban sanitary authority under the Public Health Acts (a).

The expressions "urban sanitary district" and "rural sanitary district" mean respectively an urban sanitary district and a rural sanitary district under the Public Health Acts (b), and "district" means the district of an urban sanitary authority or of a rural sanitary authority, as the case may require.

The expressions "surveyor" (c), "lands" (d), "premises" (d), "owner" (e), "drain" (f), "sewer" (g), have respectively the same meaning as in the Public Health Acts.

The expression "street" means (unless the context otherwise requires) a street as defined by the Public Health Acts, and not being a highway repairable by the inhabitants at large (h).

Words referring to "paving, metalling, and flagging" shall be construed as including macadamising, asphaltting, gravelling, kerbing, and every method of making a carriageway or footway (i).

(a) See as to what was an urban sanitary authority, *ante*, pp. 736 *et seq.*

(b) See *ante*, pp. 736 *et seq.*

(c) "Surveyor" is defined, *ante*, p. 4334.

(d) "Lands" and "premises" are defined, *ante*, p. 4335.

(e) "Owner" is defined, *ante*, p. 4335.

(f) "Drain" is defined, *ante*, p. 4343.

(g) "Sewer" is defined, *ante*, p. 4343.

(h) See the definition of a street in the P. H. A., 1875, s. 4, *ante*, p. 4336. As to the additional words "not being a highway repairable by the inhabitants at large," see *Rishton v. Mayor, etc. of Haslingden*, [1898] 1 Q. B. 294; 62 J. P. 85; 26 Digest 543, 2416; *Leigh U. D. C. v. King*, [1901] 1 K. B. 747; 65 J. P. 243; 26 Digest 363, 882; *Cabab v. Walton-on-Thames U. D. C.*, p. 1948, *ante*; *Folkestone Corporation v. Brockman*, p. 1948, *ante*; and notes on pp. 1947 *et seq.*, *ante*.

See *Vyner v. Wirral R. D. C.* (1909), 73 J. P. 242; 7 L. G. R. 628; 26 Digest 303, 351, as to the admissibility of old maps upon the question of age and (consequently) "repairability": *Mercer v. Denne*, [1905] 2 Ch. 538; 70 J. P. 65; 22 Digest 382, 3907; *Trafford v. St. Faith's R. D. C.* (1910), 74 J. P. 297; 22 Digest 381, 3901; *Moser v. Ambleside U. D. C.* (1925), 89 J. P. 118; 23 L. G. R. 533; 26 Digest 294, 256; *Att.-Gen. v. Stokesby R. D. C.* (1928), 26 L. G. R. 440; Digest Supp.; see also *Att.-Gen. v. Horner*, [1913] 2 Ch. 140; 77 J. P. 257; 26 Digest 304, 356; *Fowke v. Berington*, [1914] 2 Ch. 308.

The street, or that part of it which is to be dealt with, must be within the authority's district. Where the premises on one side of a street are in another district, no expenses can be apportioned upon them (*Hornsey Corporation v. Birkbeck Freehold Land Society*, [1906] 1 K. B. 521; 70 J. P. 140; 26 Digest 522, 2229; *Bishop Auckland Urban Council v. Alderson*, [1913] 2 K. B. 324; 76 J. P. 347; 10 L. G. R. 722; 26 Digest 542, 2404; *Shoreditch Borough Council v. Wakeham* (1905), 69 J. P. 239. See also note (b) to the P. H. A., 1875, s. 150, *ante*, p. 4390). Similarly, if in a rural district part of a street was in an adjoining contributory place in which the Act had not been put into force, no apportionment could be made on premises in that contributory place (*R. v. Cheshire J.J.*, *Ex parte Vyner* (1909), 73 J. P. 499; 26 Digest 542, 2403; but see now note on p. 4849, *ante*). When part of a street is within the area of a local authority, and part outside it, and an order made by the authority refers to the whole street, the order is *ultra vires* and cannot be severed and treated as valid so far as it applies to the portion of street in the authority's area (*Newton v. Lambton, Hetton and Joicey Collieries, Ltd.*, [1937] 2 All E. R. 150; Digest Supp.).

The street to be made up must be the street as it physically exists (*Urban Housing Co., Ltd. v. Oxford Corporation*, *post*, p. 4867).

(i) This provision meets the decision in *Att.-Gen. v. Bidder* (1881), 47 J. P. 263; 26 Digest 374, 996, *ante*, p. 4806. The text resembles the P. H. A. Amendment A., 1890, s. 11 (2), *ante*, p. 4806.

6.—(1) Where any street (a) or part of a street (b) is not sewered, levelled, paved, metalled, flagged, channelled, made good, and lighted to the satisfaction of the urban authority (c), the urban authority may from time to time resolve with respect to such street or part of a street to do any one or more of the following works (in this Act called private street works); that is to say, to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for lighting such street or

Section 6. part of a street ; and the expenses incurred by the urban authority in executing private street works shall be apportioned (subject as in this Act mentioned) on the premises fronting, adjoining, or abutting on such street or part of a street (*d*). Any such resolution may include several streets or parts of streets, or may be limited to any part or parts of a street (*e*).

A procedure, appropriate in the case of streets which are not ripe for complete making up, is available under the P. H. A. Amendment A., 1907, s. 19, where that section has been declared to be in force in the district. See the terms of that section and notes thereto, *post*, p. 5045. It will be seen that, unless a majority of the owners in a street act under sub-s. (4) of the section in question, it will be open to an authority to do urgent repairs to a private street from time to time without proceeding under either s. 150 of the Act of 1875, *ante*, p. 4388, or this Act ; and, so long as such repairs only are executed, the authority cannot be called upon to take over the street.

(a) See the definition in the preceding section.

(b) See note to the similar words in the P. H. A., 1875, s. 150, *ante*, p. 4388 : see *Standring v. Bexhill Corporation* (1909), 73 J. P. 241 ; 26 Digest 539, 2385, for an instance of a street the centre of which was repairable by a tramway company.

(c) As to what is included in the terms "paved, metalled, flagged," see s. 5, *ante*, p. 4850). As to what is included in the term "channelled," and as to the liability of a local authority in respect of a plate or cover placed over the channel in the course of work done under the Act, see *Jones v. Rew* (1910), 74 J. P. 321 ; 79 L. J. K. B. 1030 ; 26 Digest 412, 1323. See also *Horridge v. Makinson* (1915), 79 J. P. 484, *ante*, p. 4361.

As to when a street has been sewered, etc. to the satisfaction of the urban authority, see *Bonella v. Twickenham L. B.*, and later cases cited therewith at pp. 4395—4398, *ante*. Gullies and drains from part of the sewage system (*East Barnet U. D. C. v. Stacey*, [1939] 2 K. B. 861 ; [1939] 2 All E. R. 621 ; 103 J. P. 237 ; Digest Supp.

In urban districts, where s. 35 of the P. H. A., 1925, Vol. V., *post*, has been adopted, and in all rural districts (s. 30 (2) and Sched. I., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, 975), a local authority in issuing notices under this section may require a variation of the relative widths of the carriageway and footway, or footways, of the street, provided that any additional cost occasioned thereby is borne by the local authority. If that section has not been adopted in an urban district, no such variation can be made (*Robertson v. Bristol Corporation*, [1900] 2 Q. B. 198 ; 64 J. P. 389 ; 26 Digest 527, 2259).

(d) As to what are premises "fronting, adjoining, or abutting on a street," see the notes on p. 4400, *ante*. The words "subject as in this Act mentioned," refer to s. 10 *post*, p. 4859, which enables the authority to resolve that in settling the apportionment, certain matters other than mere frontage shall be taken into consideration.

It has been held that all premises in the street must be included in the provisional apportionment, although some of such premises are *extra commercium*, and therefore have no "owners" within the meaning of the statute (*Herne Bay U. D. C. v. Payne*, [1907] 2 K. B. 130 ; 71 J. P. 282 ; 26 Digest 544, 2425). But there is a discretion under s. 10, *post*, p. 4859, in the local authority to include in the apportionment premises which do not front, adjoin or abut on the street ; this, however, is a discretion vested solely in the authority, and justices cannot include such premises if the authority have excluded them (*Hornchurch U. D. C. v. Webber*, [1938] 1 K. B. 698 ; [1938] 1 All E. R. 309 ; 102 J. P. 167 ; Digest Supp.).

(e) This was a new provision.

A form of resolution for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XII., at p. 564.

(2) The surveyor shall prepare, as respects each street or part of a street (*a*)—

(a) A specification of the private street works referred to in the resolution, with plans and sections (if applicable) (*b*) ;

(b) An estimate (*c*) of the probable expenses of the works ;

(c) A provisional apportionment of the estimated expenses among the premises liable to be charged therewith under this Act (*d*).

Section 6.

Such specification, plans, sections, estimate, and provisional apportionment shall comprise the particulars prescribed in Part I. of the Schedule to this Act, and shall be submitted to the urban authority, who may by resolution approve the same respectively with or without modification or addition as they think fit (e).

(a) The original resolution may include several streets or parts of streets, but the surveyor must deal with each separately in making his specification, etc.

(b) Where the county surveyor is preparing a specification under this sub-section in respect of a street in a rural district he must consult the district council as to any works of sewerage to be included (s. 30 (2) and Sched. I., Pt. I., of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, 975).

(c) The estimate may include a percentage allowance for "contingencies" (*Standing v. Beachill Corporation, ante, p. 4852*).

(d) As to the manner in which the provisional apportionment is to be made, see s. 10, *post*, p. 4859. See form of provisional apportionment in the Encyclopædia of Forms and Precedents, Vol. XII., p. 567.

(e) This is a second resolution, quite different from that mentioned in sub-s. (1). See form in the Encyclopædia of Forms and Precedents, Vol. XII., p. 568. It must be published in the manner provided by the next sub-section. The specifications, etc. are not required to be published, but only the resolution, which should, therefore, clearly identify the specifications, etc. to which it refers.

(8) The resolution approving the specifications, plans, and sections (if any), estimates, and provisional apportionments, shall be published in the manner prescribed in Part II. of the Schedule to this Act (a), and copies thereof shall be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication (b). During one month (c) from the date of the first publication the approved specifications, plans, and sections (if any), estimates, and provisional apportionments (or copies thereof certified by the surveyor), shall be kept deposited at the urban authority offices, and shall be open to inspection at all reasonable times (d).

(a) *I.e.*, by advertisement in a local paper once in each of two successive weeks, and by posting copies in or near the street once at least in each of three successive weeks. See the Schedule and notes thereto, *post*, p. 4870. See form of notice of resolution in the Encyclopædia of Forms and Precedents, Vol. XII., p. 569.

(b) As the Act does not provide for the service of the notices, they may be served in manner provided by the P. H. A., 1875, s. 267, *ante*, p. 4495, and may be authenticated in manner provided by *ibid.*, s. 266, *ante*, p. 4494. The sub-section requires service on the "owner," not "reputed owner"; therefore, service on a person shown in the apportionment as "owner or reputed owner" is not sufficient if he be not in fact owner (*Wirral R. D. C. v. Carter*, [1903] 1 K. B. 646; 67 J. P. 31; 26 Digest 543, 2409). The expression owner is defined, *ante*, p. 4851.

(c) "Month" means calendar month (Interpretation Act, 1889, s. 3; 18 Halsbury's Statutes 993).

(d) Reasonable times would probably be held equivalent to usual office hours.

From the fact that the urban authority has resolved under this section to approve a provisional apportionment including premises which do not abut on the street but access to which is obtained from the street through a court, passage, etc. (as to which see s. 10, *post*), it must be presumed that they think fit to do so, but strictly speaking the resolution of approval should say so expressly (*Oakley v. Merthyr Tydfil Corporation*, [1922] 1 K. B. 409; 86 J. P. 1; 26 Digest 541, 2396).

7. During the said month any owner of any premises (a) shown in a provisional apportionment as liable to be charged with any part of the expenses of executing the works may, by written notice served on the

Objections to proposed works.

Section 7. urban authority (b), object to the proposals of the urban authority on any of the following grounds : (that is to say,)

- (a) That an alleged street or part of a street is not or does not form part of a street within the meaning of this Act (c) ;
- (b) That a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large (d) ;
- (c) That there has been some material informality, defect, or error in or in respect of the resolution, notice, plans, sections, or estimate ;
- (d) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive (e) ;
- (e) That any premises ought to be excluded from or inserted in the provisional apportionment (f) ;
- (f) That the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment is made with regard to other considerations than frontage as hereinafter provided) in respect of the degree of benefit to be derived by any persons, or the amount or value of any work already done by the owner or occupier of any premises (g).

For the purposes of this Act joint tenants or tenants in common may object through one of their number authorised in writing under the hands of the majority of such joint tenants or tenants in common.

(a) The expressions "owner" and "premises" are defined, *ante*, p. 4335. If a mistake has been made as to who is the owner, the real owner can object under this section, although his name is not shown in the provisional apportionment.

(b) There is no duty on the part of a frontager to inspect the plans, so as to cast on him any liability for the leaving of a dangerous hole in the street consequent on the raising of the level of the street as shown in the plans (*Horridge v. Makinson* (1915), 79 J. P. 484; 84 L. J. K. B. 1294; 26 Digest 542, 2407). No mode of service is prescribed. Presumably a notice addressed to the authority, and left at their office during business hours, will be sufficient. See form of notice of objection in the *Encyclopædia of Forms and Precedents*, Vol. XII., p. 570.

Certain frontagers addressed a memorial to a corporation stating that they had no desire to have the road taken over by the authority and that the proposed works were unreasonable and unnecessary, and asking that before any further steps were taken to carry out the works, an inquiry should be held upon the point. It was held that such a memorial was not an "objection" within the meaning of this section (*Southampton Corporation v. Lord* (1903), 67 J. P. 189; 26 Digest 543, 2414).

No objection which might be raised under the Act can be subsequently taken in any court, proceeding, or manner whatsoever (s. 8 (2), *post*, p. 4858). See as to this, *Wallasey U. D. C. v. Walker*, and *Porthcawl U. D. C. v. Brogden*, *post*, pp. 4856, 4857; *Hayles v. Sandown U. D. C.*, [1903] 1 K. B. 169; 67 J. P. 177; 26 Digest 547, 2443, where it was alleged that there had been a departure from the specifications; and *Teddington U. D. C. v. Vile* (1906), 70 J. P. 381; 4 L. G. R. 782; 26 Digest 547, 2444, where a frontager failed to object at the proper time that a sewer had already been laid in front of her house by the former owner under an agreement with the authority.

(c) In consequence of the very wide definition of "street" in the P. H. A., 1875, s. 4, p. 4336, *ante*, objection is seldom taken that the place in question is not a "street" as therein defined. See, however, *Bell & Sons v. Great Crosby U. D. C.* (1912), 77 J. P. 37; 26 Digest 540, 2386, for a dispute as to whether a strip of ground in front of a house formed part of an admitted "street" or was purely private property. But the definition of a street in this Act (s. 5, *ante*, p. 4851) adds the words "not being a highway repairable by the inhabitants at large," and these words, as used either here or in the corresponding s. 150 of the P. H. A., 1875, have been the subject

"Not a street."

of much litigation. The decisions will be found in the notes to ss. 149, 150, *ante*, pp. 1947, 4393. Under the Act of 1875, *ante*, p. 4388, the objection that the street is a highway repairable by the inhabitants at large has always been within the cognisance of a court of summary jurisdiction on proceedings taken to enforce payment of the sum apportioned: see the cases cited, *ante*, p. 4408. Cases in which the objection has been taken under this Act are referred to in note (h) under s. 5, *ante*, p. 4851.

The objection "that a street or part of a street is (in whole or in part) a highway repairable by the inhabitants at large" is open under the objection that it is not a "street" (*Carey v. Bexhill Corporation*, [1904] 1 K. B. 142; 68 J. P. 78; 26 Digest 543, 2417).

(d) This ground of objection is, as pointed out in the last note, open under an "Highway objection under (a). It is to be observed that an owner may object that part of the repairable," width of the street is a highway repairable by the inhabitants at large, and the Act etc. is silent as to what is to be done if the objection is made out. Under the P. H. A., 1875, s. 150, the owner would have been liable to pay in respect of the entire street, including the old highway (*Evans v. Newport Sanitary Authority*, *ante*, p. 4418). In this Act there is no provision to that effect, and it is generally assumed that in such case the court of summary jurisdiction may, under s. 8 (1), *post*, p. 4857, amend the resolution, plans, etc. by limiting the scheme to the remaining portion of the street. See on this point *R. v. Cheshire J.J.*, *Ex parte Vyner* (1909), 73 J. P. 499; 101 L. T. 683; 26 Digest 542, 2403, but note that *Twickenham U. D. C. v. Muntion*, [1899] 1 Ch. 168; 63 J. P. 23; [1899] 2 Ch. 603; 26 Digest 544, 2426, is not (as might appear from the report) really an authority upon the point; for there the justices excluded not one strip of a street but one length of it. Where on the evidence a road appeared to be a highway repairable by the local authority as to the carriageway but not as to the footway, it was held that the authority could not in any event recover more than half the cost of making up the whole (*Finney v. Birkenhead Corporation*, [1936] 2 All E. R. 590; Digest Supp.).

Where a court of summary jurisdiction have decided upon an objection under this Act that a street is a highway repairable by the inhabitants at large, the matter is *res judicata*, and the authority cannot again raise the point, even on fresh evidence, in other proceedings under the Act in respect of the same length of street (*Wakefield Corporation v. Cooke*, [1904] A. C. 31; 68 J. P. 225; 26 Digest 543, 2419).

Justices cannot, even by agreement, enforce an apportionment, if the street is a highway repairable by the inhabitants at large. Therefore, an agreement by which an authority "take over" a street, but purport to reserve their rights to do paving work, etc. under the P. H. A., 1875, s. 150, or under this Act, will not enable them to enforce payment under those statutes by summary proceedings (*Folkestone Corporation v. Marsh* (1905), 70 J. P. 113; 94 L. T. 511; 26 Digest 544, 2420), unless, indeed, a frontager has failed to give notice of objection (see *Folkestone (Mayor of) v. Rook*, *ante*, p. 4368).

(e) Under the P. H. A., 1875, s. 150, justices have no jurisdiction to entertain objections of this kind, it being for the authority to determine whether the proposed works are or are not insufficient or unreasonable, subject only to an appeal to the Minister of Health under s. 268, *ante*, p. 4495. The provision in the text virtually makes the justices a court of review in respect of matters which are peculiarly within the cognisance of the authority, and this has been strongly urged as a reason for not adopting the Act.

Under this head the objection cannot be taken that the street at one point is too narrow and that nevertheless the authority do not propose to widen it (*Mansfield Corporation v. Butterworth*, [1898] 2 Q. B. 274; 62 J. P. 500; 26 Digest 544, 2424). The ground of this decision was that the expression "insufficient" means insufficient to effect the objects proposed to be effected by the works; and "unreasonable" means unreasonable with reference to the scheme itself. The court can take into consideration the existing state of the drainage in a street proposed to be sewered. Therefore, where houses were drained from the back into a sewer, a magistrate was held justified in finding it unreasonable to provide a sewer in the street in front, except for surface and sink water (*Sheffield Corporation v. Anderson* (1894), 64 L. J. M. C. 44; 72 L. T. 242; 26 Digest 544, 2422).

An authority would not under the present Act alone be entitled to provide at the expense of the frontagers a larger sewer than the street requires in order to facilitate the drainage of other parts of the town, but they might construct an unnecessarily large sewer provided they themselves bear the extra cost (*Acton U. D. C. v. Watts*

"Insufficient, unreasonable," etc.

**Note to
Section 7.**

(1903), 67 J. P. 400; 26 Digest 529, 2279). See, however, s. 19 of the P. H. A., 1936, and note (a) thereon, *ante*, p. 45.

The dictum of Salter, J., in *Chester Corporation v. Briggs*, [1924] 1 K. B. 239, at p. 247; 88 J. P. 1, at p. 3; 26 Digest 547, 2447, that "in considering an objection under s. 7 (d) that the proposed works are unreasonable, the justices are entitled to consider among other things, whether the proposed works are reasonable in the sense that it is reasonable that such work shall be done at the frontager's expense" was expressly disapproved of by the Divisional Court in *Allen v. Hornchurch U. D. C.*, [1938] 2 K. B. 654; [1938] 2 All E. R. 431; 102 J. P. 393; Digest Supp. In the first mentioned case it was held that whatever conclusion the justices came to on this question they could not amend the apportionment by attributing part of the cost to the local authority under s. 15, *post*, p. 4865. It was further held in *Chatham Corporation v. Wright* (1929), 94 J. P. 43; Digest Supp., that it is not within the province of the justices, directly or indirectly, to compel the urban sanitary authority to make a larger contribution than that which they have already agreed to grant.

Under a similar provision in a local Act, it was held that the justices could not find that work was unnecessary without hearing evidence upon the point (*Birmingham Corporation v. Mother-General of Convent of Sisters of Charity of St. Paul* (1927), 91 J. P. 186; 25 L. G. R. 517; Digest Supp.).

**Incorrect
apportion-
ment.**

(f) If the apportionment is according to frontage, the objection will usually be that the premises do not "front, adjoin, or abut"; as to which see *ante*, p. 4400. Under s. 10, *post*, p. 4859, the apportionment may be made having regard to the benefit derived by premises, but an owner cannot object on the ground that this principle should have, but has not, been adopted (*Bridgwater Corporation v. Stone*, p. 4860, *post*); his proper remedy for that grievance is by appeal to the Minister of Health under the P. H. A., 1875, s. 268, *ante*, p. 4495 (*R. v. Minister of Health, Ex parte Aldridge*, [1925] 2 K. B. 363; 89 J. P. 114; 26 Digest 545, 2433). Section 10 also enables premises to be included in a provisional apportionment on the ground of benefit of access, and it would seem that an owner of premises so included may object under this head that they ought to be excluded, but the justices cannot include any such premises (*Hornchurch U. D. C. v. Webber*, [1938] 1 K. B. 698; 102 J. P. 167).

In *Dodworth U. D. C. v. Ibbotson* (1903), 67 J. P. 132; 26 Digest 542, 2400, an owner objected under this sub-section upon the following facts: In 1878 the authority did some work to the pavement of a private street, and part of the expenses were paid by J. and S., two frontagers. In the following year the authority passed a resolution to the effect that "an indemnity be given to J. and S. on account of further expenses that may be occasioned in connection with Street." In 1902 the authority resolved to make up the street under this Act, and included the premises of J. and S. in the apportionment. The justices ordered the premises to be excluded. The decision was reversed by the Divisional Court, who held that the resolution referred only to expenses to be incurred at the time of, or shortly after, its date. Apparently, too, if the resolution had referred to future expenses for all future time, it would have been held to be *ultra vires* and invalid (*Ibid.*; *Folkestone (Mayor, etc. of) v. Rook*, *ante*, p. 4368). On this latter point, however, *Bromley L. B. v. Lansbury* (1894), Times, December 5th, should be considered. In that case a new road was laid out in 1878, and in 1884 the frontagers and the local board agreed that the road should be properly made up and maintained for six months by the frontagers and then adopted by the board. The work was duly done, but the defendants gave no notice of adoption under the P. H. A., 1875, s. 152, *ante*, p. 4423. It was, however, held in 1894 that the local board were bound by the agreement, and could not require the frontagers again to pave the road under s. 150, *ante*, p. 4388.

An authority made an apportionment on certain premises, and served notice on the reputed owners. When sued for the amount, the owners for the first time discovered and pleaded that the frontage wall belonged to another person, and that therefore their premises did not abut on the street. It was held that they could not rely upon the point, since their names appeared in the apportionment, and they had been served, as owners of premises abutting upon the street, and they ought therefore to have objected under s. 7 (e) (*Wallasey U. D. C. v. Walker & Co.* (1906), 70 J. P. 199; 26 Digest 547, 2445).

An objection by a frontager on the ground that by agreement with the urban authority he has been exempted from liability in respect of his property is, if not an

objection within the meaning of head (e) of this section, at any rate an objection within the meaning of head (f), and must be raised accordingly. The objection cannot be taken in proceedings to enforce his charge on the property: *Porthcawl U. D. C. v. Brogden*, [1917] 1 Ch. 534; 81 J. P. 137; 26 Digest 547, 2446.

Note to
Section 7

(g) As to this, see s. 10, *post*, p. 4859.

8.—(1) The urban authority at any time after the expiration of the said month may (a) apply to a court of summary jurisdiction (b) to appoint a time for determining the matter of all objections (c) made as in this Act mentioned, and shall publish a notice of the time and place appointed, and copies of such notice shall be served upon the objectors; and at the time and place so appointed any such court may proceed to hear and determine the matter of all such objections in the same manner as nearly as may be, and with the same powers and subject to the same provisions with respect to stating a case, as if the urban authority were proceeding summarily against the objectors to enforce payment of a sum of money summarily recoverable (d). The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or of the urban authority (e). The court may also, if it thinks fit, adjourn the hearing and direct any further notices to be given (f).

Hearing and
determina-
tion of
objections.

A form of notice of hearing of objections for use under this section will be found in the *Encyclopædia of Forms and Precedents*, Vol. XII., p. 570.

(a) "May" here means "shall," and all objections must be determined before any works are done. After the works have been done, the court has no jurisdiction to entertain an application under this section (*Faulkner v. Hythe Corporation*, [1927] 1 K. B. 532; 91 J. P. 22; Digest Supp.).

(b) See the definition, *ante*, p. 4345.

(c) It appears to be contemplated that the whole of the objections shall be heard together.

(d) That is to say, the procedure is to be the same as if the urban authority were complainants and the objectors were summoned for the recovery of the expenses. One result of this is that the burden of proof will be on the urban authority. See hereon *Rishton v. Haslingden Corporation*, *ante*, p. 4394; *Vyner v. Wirral R. D. C.* (1909), 73 J. P. 242, *per JELF, J.*; 26 Digest 303, 351; but see *Folkestone Corporation v. Brockman*, [1914] A. C. 338; 78 J. P. 273 (*ante*, p. 1948), *per Lord KINNEAR*; and see, generally, as to the onus of proof, *Robins v. National Trust Co.*, [1927] A. C. 515; 43 T. L. R. 243.

An appeal to quarter sessions lies from the justices' decision (*Pearce v. Maidenhead Corporation*, *post*, p. 4858).

(e) The powers conferred on the justices are very wide, and enable them to correct any mistake at any step in the procedure. For instance, if an objection be made out that a length of the street is a highway repairable by the inhabitants at large, the justices may amend the scheme by limiting it to the remainder, and in such case it will not be necessary for the authority before proceeding with the amended scheme to begin proceedings *de novo* or pass a resolution approving the amended scheme (*Twickenham U. D. C. v. Muntion*, [1899] 2 Ch. 603; 26 Digest 544, 2426). The authority may point out, and the justice may correct, any mistake in the apportionment although it has not been challenged by any objection (*Hall v. Bolsover U. D. C.* (1909), 73 J. P. 140; 100 L. T. 372; 26 Digest 545, 2429).

Justices cannot, however, amend the resolution by inserting a resolution under s. 15, *post*, that the local authority shall bear part of the cost (*Chester Corporation v. Briggs*, [1924] 1 K. B. 239; 88 J. P. 1; 26 Digest 547, 2447), nor vary the resolution so as to alter the amount of any contribution which the local authority have resolved to make (90 J. P. N. 486). See also *Chatham Corporation v. Wright*, *post*, p. 4865. Nor can they include premises which do not front on the street (*Hornchurch U. D. C. v. Webber*, *ante*, p. 4852).

See as to the creation of an estoppel by the justices' decision, *Wakefield Corporation v. Cooke*, *ante*, p. 4855.

**Note to
Section 8.**

(f) This will as a rule be the proper course to adopt where (*e.g.*) notice has been served on the wrong person under s. 6, *ante*, p. 4851, or it is intended to add an owner of premises who is suggested to derive benefit from the proposed works. As a matter of pure law, where the justices have decided upon amending the scheme, it is within their discretion whether they will adjourn the hearing and direct further notices to be given; but where the amendment is of a material character, it is desirable, though not obligatory, to do so in order that persons affected by the amendment may have an opportunity of being heard (*Twickenham U. D. C. v. Muntion*, *ante*, p. 4857).

(2) No objection which could be made under this Act shall be otherwise made or allowed in any court proceeding or manner whatsoever.

Therefore an owner cannot, when proceedings are taken against him under s. 14, *post*, p. 4864, for recovery of the expenses finally apportioned, raise by way of defence any objection which might have been raised and determined in manner provided by this and the preceding section (*Woodford U. D. C. v. Henwood* (1899), 64 J. P. 148; 26 Digest 543, 2418; see also *Hayles v. Sandown U. D. C.*, *ante*, p. 4854; *Teddington U. D. C. v. Vile*, *ante*, p. 4854; *Wallasey U. D. C. v. Walker*, *ante*, p. 4856, and *Porthcawl U. D. C. v. Brogden*, *ante*, p. 4857). This provision takes away the jurisdiction of the Minister of Health under the P. H. A., 1875, s. 268, *ante*, p. 4495, so far as relates to any ground of objection specified in ss. 7 and 12, but an appeal will lie on other grounds (*e.g.*, that the resolution has not provided for an apportionment on the basis of degree of benefit under s. 10 (a), *post*, p. 4859 (*R. v. Minister of Health, Ex parte Aldridge*, [1925] 2 K. B. 363; 89 J. P. 114; 26 Digest 545, 2433). As to appeals to the Minister of Health under s. 268 on grounds other than those specified in ss. 7 and 12 of this Act, see *Pearce v. Maidenhead Corporation*, [1907] 2 K. B. 96; 71 J. P. 230; 26 Digest 545, 2432, explaining *Hayles v. Sandown U. D. C.*, *ante*, p. 4854.

In connection with appeals to the Minister of Health under s. 268 in respect of matters arising under this Act the question arises what is the "decision" referred to in s. 268. Upon this depends the question of the time within which an appeal can be made. There is no "notice of demand" (see cases noted under s. 268 of the Act of 1875) under the Private Street Works Act, 1892, and the final apportionment is not necessarily a final settlement of the amount due, for it can be objected to within one month.

It is understood that in the view of the department one month must elapse from the service of the final apportionment and that an owner can then appeal within twenty-one days of the service by the local authority of a valid request or demand for payment.

(3) The costs of any proceedings before a court of summary jurisdiction in relation to objections under this Act shall be in the discretion of the court, and the court shall have power, if it thinks fit, to direct that the whole or any part of such costs ordered to be paid by an objector or objectors shall be paid in the first instance by the urban authority, and charged as part of the expenses of the works on the premises of the objector or objectors in such proportions as may appear just.

Under this sub-section the court may order each objector to pay at once his share of the authority's costs, or it may order that the share payable by each shall be added to the expenses for which he may ultimately be liable, and recovered accordingly.

**Incidental
works.**

9.—(1) The urban authority may include in any works to be done under this Act with respect to any street or part of a street any works which they think necessary for bringing the street or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with any other streets (whether repairable or not by the inhabitants at large), including the provision of separate sewers for the reception of sewage and of surface water respectively.

Under the P. H. A., 1875, s. 150, *ante*, p. 4388, a street dealt with must be regarded as an isolated street, and frontagers cannot be required to make it on a level, etc.,

with other streets: see *Caley v. Kingston-upon-Hull L. B.*, ante, p. 4397. This provision was evidently inserted with a view to that decision. See also s. 35 of the P. H. A., 1925, Vol. V., post, which enables a local authority to vary the respective widths of carriageway and footway when making up a street in an urban district where that section has been adopted, and in any rural district (s. 30 (2), and Sched. I., L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, 975).

The section does not, however, enable them to charge the cost of altering gullies and drains connected to a sewer which have been in position for some time (*East Barnet U. D. C. v. Stacey*, ante, p. 4852).

The authority may drain the surface water into any natural or artificial stream or watercourse provided they observe the restrictions of the P. H. A., 1936, s. 30, ante, p. 87. If the watercourse thereby becomes silted up with sand off the surface of the road, the remedy of riparian owners is by proceeding for compensation under s. 308 of P. H. A., 1875, ante, p. 4515 (*Durrant v. Branksome U. D. C.*, [1897] 2 Ch. 291; 61 J. P. 472; 38 Digest 56, 327).

(2) The urban authority in any estimate of the expenses of private street works may include a commission not exceeding five pounds per centum (in addition to the estimated actual cost) in respect of surveys, superintendence, and notices, and such commission when received shall be carried to the credit of the district fund.

The commission must be entered when received in the separate accounts kept under s. 21, post, p. 4868, though it will be applied differently from the expenses. It is doubtful whether such charges can be recovered under the P. H. A., 1875, s. 150, ante, p. 4388; see *Walthamstow L. B. v. Staines*, [1891] 2 Ch. 606; 26 Digest 538, 2372; and cases cited therewith at p. 4408, ante.

10. In a provisional apportionment of expenses of private street works the apportionment of expenses against the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred shall, unless the urban authority otherwise resolve, be apportioned according to the frontage of the respective premises; but the urban authority may, if they think just, resolve that in settling the apportionment regard shall be had to the following considerations; (that is to say,)

Apportionment of expenses.

- (a) The greater or less degree of benefit to be derived by any premises from such works;
- (b) The amount and value of any work already done by the owners or occupiers of any such premises.

They may also, if they think just, include any premises which do not front, adjoin, or abut on the street or part of a street, but access to which is obtained from the street through a court, passage, or otherwise, and which in their opinion will be benefited by the works, and may fix the sum or proportion to be charged against any such premises accordingly.

The apportionment should be made upon each separate house or plot, and different premises belonging to one owner should not be lumped together (*Croydon R. D. C. v. Betts*, [1914] 1 Ch. 870; 78 J. P. N. 160; 26 Digest 536, 2358; *Pontypridd U. D. C. v. Jones*, p. 4863, post); if subsequently rendered necessary by subdivision of a property, a court could probably divide the apportioned sum (cf. *Sydney Municipal Council v. Fleay*, [1911] A. C. 371). As to what constitutes one close for the purpose of apportionment where adjoining plots have been purchased at different times, see *Altrincham U. D. C. v. O'Brien* (1927), 91 J. P. 149; 25 L. G. R. 369; Digest Supp.

Under the P. H. A., 1875, s. 150, ante, p. 4388, the expenses must be apportioned according to frontage. Under this Act also they are to be so apportioned unless the authority resolve to exercise one or both of the powers here conferred upon them. If they do so resolve, it will be the duty of the surveyor to take the consideration indicated into account in making his apportionment. The apportionment of the

Note to
Section 9.

**Note to
Section 10.**

surveyor must be approved by the authority under s. 6, *ante*, p. 4851, and may be objected to under s. 7, *ante*, p. 4853.

See, as to an authority's discretionary power to vary the normal rule of frontage apportionment, *Hornchurch U. D. C. v. Webber*, [1938] 1 K. B. 698; [1938] 1 All E. R. 309; 102 J. P. 167; Digest Supp.; *Allen v. Hornchurch U. D. C.*, [1938] 2 K. B. 654; 102 J. P. 393; *sub nom. Hornchurch U. D. C. v. Allen*, [1938] 2 All E. R. 431; Digest Supp.

It is for the authority alone to decide whether to make use of this section; and the justices cannot entertain an objection that they ought to have, but have not, done so (*Bridgwater Corporation v. Stone* (1908), 72 J. P. 487; 99 L. T. 806; 26 Digest 545, 2428). An appeal will, however, lie to the Minister of Health under the P. H. A., 1875, s. 268, *ante*, p. 4495, against the decision of the local authority (*R. v. Minister of Health, Ex parte Aldridge*, [1925] 2 K. B. 363; 89 J. P. 114; 26 Digest 545, 2433).

A local board resolved to execute certain private street works in a street which had buildings on the north side only, and was bounded on the south side chiefly by land of the local board. The works comprised the making up of the roadway, and the paving and kerbing of a footpath on the north side only, no footpath being made on the south side. By the provisional apportionment the expenses of paving and kerbing the footpath were apportioned amongst the owners of premises abutting on the north side only. All other expenses were apportioned amongst the owners of premises abutting on both sides of the street, including the local board as the owners of land on the south side. It was held that the expenses of the footpath were properly apportionable amongst the owners of premises on both sides of the street (*Clacton L. B. v. Young*, [1895] 1 Q. B. 395; 59 J. P. 581; 26 Digest 540, 2389).

The latter part of this section introduced a new provision, whereby premises may be made liable to contribute though not abutting on the street: see *Baddeley v. Giggell and London School Board v. Vestry of St. Mary, Islington*, *ante*, p. 4402. The conditions are that such premises have access to the street and are benefited by the works. The owner of such premises may object under s. 7 (*f*), *ante*, p. 4854. If it is decided to bring in premises under the latter part of the section it is not essential but is advisable to state in the resolution approving the provisional apportionment that the authority "think just" to include the premises (*Oakley v. Merthyr Tydfil Corporation*, [1922] 1 K. B. 409; 86 J. P. 1; 26 Digest 541, 2396).

As to the meaning of the words "court, passage or otherwise," see *Newquay U. D. C. v. Rickeard*, [1911] 2 K. B. 846; 75 J. P. 382; 26 Digest 541, 2391: apparently they include anything which gives access to the premises in the same way as a court or passage, but not a public street or a road made for a purpose other than that of giving access to the premises in question (*ibid.*). The appellant's premises did not front or abut on that portion of a street called Grange Lane upon which works were being carried out, but access therefrom to his premises was obtained through the remaining portion of Grange Lane. It was held that the words "court, passage or otherwise" mean a court or passage or something in the nature of a court or passage, but do not mean a portion of the street-itself, and that the section did not empower the authority to include the appellant's premises in the provisional apportionment: *Chatterton v. Glanford R. D. C.*, [1915] 3 K. B. 707; 79 J. P. 441; 26 Digest 541, 2395. The word "passage" in this section means something in the nature of a feeder of the street to be made up, though it need not be the only means of approaching the street (*Oakley v. Merthyr Tydfil Corporation*, *supra*).

Amendment
of plan, etc.

11. The urban authority may from time to time amend the specifications, plans, and sections (if any), estimates, and provisional apportionments for any private street works, but if the total amount of the estimate in respect of any street or part of a street is increased, such estimate and the provisional apportionment shall be published in the manner prescribed in Part II. of the Schedule to this Act, and shall be open to inspection at the urban authority offices at all reasonable times, and copies thereof shall be served on the owners of the premises affected thereby; and objections may be made to the increase and apportionment and, if made, shall be dealt with and determined in like manner as objections to the original estimate and apportionment.

If the amendment does not increase the estimate nothing more need be done ; if it does, it will be necessary to proceed de novo, and to advertise and give notices as mentioned in Schedule, Part II, *post*, p. 4870. As to objections, see s. 7, *ante*, p. 4853

**Note to
Section 11.**
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12.—(1) When any private street works have been completed and, the expenses thereof ascertained, the surveyor shall make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment (as the case may be), and such final apportionment shall be conclusive for all purposes ; and notice of such final apportionment shall be served upon the owners of the premises affected thereby ; and the sums apportioned thereby shall be recoverable in manner provided by this Act, or in the same manner as private improvement expenses are recoverable under the Public Health Act, 1875, including the power to declare any such expenses to be payable by instalments.

Final apportionment and recovery of expenses.

See forms of final apportionment and notice thereof in the Encyclopædia of Forms and Precedents, Vol. XII., pp. 571, 572.

The final apportionment may be objected to in manner provided by the next subsection. Notices may be authenticated in manner provided by the P. H. A., 1875, s. 266, *ante*, p. 4494, and served in accordance with *ibid.*, s. 267, *ante*, p. 4495.

As to the recovery of sums under this Act, see s. 13, *post*, p. 4862, and s. 14, *post*, p. 4864.

As to the power to declare expenses payable by instalments, see the P. H. A., 1875, s. 257, *ante*, p. 4489.

The combined effect of this Act and s. 257 of the P. H. A., 1875, is that the apportioned amount becomes charged on the premises at the time of completion of the works as from that date (*Surtees v. Woodhouse*, [1903] 1 K. B. 396 ; 67 J. P. 232 ; 26 Digest 546, 2437), but there is no personal liability on the owner until the sum is demanded from him (*Dennerley v. Prestwich U. D. C.*, [1930] 1 K. B. 334 ; 94 J. P. 34 ; Digest Supp.).

As to the incidence of paving expenses between limited owners and reversioners, landlords and tenants, and vendors and purchasers, see the cases cited on pp. 589—603' *ante*. See also s. 17, *post*, p. 4866.

(2) Within one month after such notice the owner of any premises charged with any expenses under such apportionment may, by a written notice to the urban authority, object to such final apportionment on the following grounds, or any of them :

- (a) That the actual expenses have without sufficient reason exceeded the estimated expenses by more than fifteen per cent. .
- (b) That the final apportionment has not been made in accordance with this section.
- (c) That there has been an unreasonable departure from the specification, plans, and sections.

The Act is silent as to what is to happen if the objector makes good his objection, but in *Hayles v. Sandown U. D. C.*, *infra*, Lord ALVERSTONE, C.J., said that the justices might correct the figures and in effect make a fresh apportionment.

A frontager, on proceedings being taken to recover from him his apportioned share of expenses, attempted to establish that the surveyor had allowed the contractor to deviate from the specifications, and that the works had never been "completed." It was held that such an objection could probably have been raised under the above section at the proper time ; but that in any case the justices were right in not allowing it to be raised before them (*Hayles v. Sandown U. D. C.*, [1903] 1 K. B. 169 ; 67 J. P. 177 ; 26 Digest 546, 2443).

(3) Objections under this section shall be determined in the same manner as objections to the provisional apportionment.

See s. 8, *ante*, p. 4857.

Section 13.

Charge on
premises.

13.—(1) Any premises included in the final apportionment, and all estates and interests from time to time therein, shall stand and remain charged (to the like extent and effect as under section two hundred and fifty-seven of the Public Health Act, 1875) with the sum finally apportioned on them, or if objection has been made against the final apportionment with the sum determined to be due as from the date of the final apportionment, with interest at the rate of *four (a)* pounds per centum per annum, and the urban authority shall, for the recovery of such sum and interest, have all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver.

See the P. H. A., 1875, s. 257, *ante*, p. 4489, and the notes thereon.

The section does not state from what date the interest is to run, but it has been decided that it runs from the date of the final apportionment (*Stock v. Meakin*, [1900] 1 Ch. 683; 26 Digest 545, 2436). Under the P. H. A., 1875, s. 257, it runs from date of demand. Under the same section the rate of interest was to be a rate not exceeding 5 per cent. Now, however, s. 77, P. H. A., 1925, Vol. V., *post*, provides that both under the P. H. A., 1875, *ante*, p. 4331, and this Act the rate is to be 5 per cent. or such other rate as the Minister may by order fix, and the present rate so fixed is 4 per cent. (M. of H. (Rate of Interest on Private Improvement Expenses) Order, 1934, *ante*, p. 3191). A frontager cannot deduct income tax on the interest due from him (*Gateshead Corporation v. Lumsden*, p. 588, *ante*).

The charge on the property operates as from the date of the completion of the works (*Stock v. Meakin*, *supra*; *Surtees v. Woodhouse*, *ante*, p. 598). But of course, unless the notices required by this Act to be served on the owner have been duly served the council have no charge upon the premises and no right to sell them (*Maquire v. Leigh-on-Sea U. D. C.* (1906), 70 J. P. 479; 95 L. T. 319; 26 Digest 545, 2435).

The provisions of the Conveyancing Act, 1881, referred to are ss. 18—24. The Act of 1881 (15 Halsbury's Statutes 136) has now been repealed and the sections referred to, together with the amendments to the Act of 1881 contained in ss. 3—5 of the Conveyancing Act, 1911 (also repealed), are now reproduced in ss. 99—109 of the Law of Property Act, 1925, Vol. V., *post*. See also s. 196, *ibid.*, as to notices. The power to appoint a receiver is the most useful of the powers hereby conferred on an authority: see *Tottenham U. D. C. v. Smith* (1897), Times, March 6th, where ROMER, J., appointed a receiver under a local Act conferring on the local authority in respect of a charge for street expenses all the rights and remedies of mortgagees under the Act of 1881. There would, however, appear to be some doubt whether on a sale under the Conveyancing Act an authority will have power to pass the legal estate (see the argument in *West Ham Corporation v. Sharp*, *infra*, and the cases there cited).

It will be observed that it is not necessary under this Act, as it is under the P. H. A., 1875, to bring an action in order to enforce the charge. But the authority may do so, if it is more convenient (*West Ham Corporation v. Sharp*, [1907] 1 K. B. 445; 71 J. P. 100; 26 Digest 546, 2439), and it would obviously be convenient if the doubt expressed above as to the power to pass the legal estate is well founded, for under an Order the authority would be able to sell the fee simple: see *Birmingham Corporation v. Baker*, *ante*, p. 605. As a result of paving works under this Act a sum of £137 was apportioned on 9 houses belonging to the defendant. The authority took out an originating summons in the Chancery Division asking for a declaration of charge for the £137 and interest thereon at 5 per cent., the usual inquiries, an order for sale and a receiver. The defendant paid the £137 with 4 per cent. interest, and objected that (1) proceedings had been commenced before three months had expired from the date of the notice; (2) 4 per cent. only should have been asked; (3) the £137 was asked as a whole sum and not apportioned on the houses individually; and (4) the proceedings ought to have been brought in the county court. An application for leave to interrogate was adjourned into court to come on with the summons, and the

summons was amended by stating in a schedule how the £137 was apportioned upon the various houses. It was held that the defendant showed no defence and must pay the costs. *Semble*, an originating summons, if it is not adjourned into court, is cheaper and more expeditious than a plaint in the county court (*Pontypridd U. D. C. v. Jones* (1911), 75 J. P. 345; 26 Digest 546, 2441); see also *Croydon R. D. C. v. Betts*, on p. 4859, *ante*. As to the difficulty which arises where the owner of premises cannot be traced, see *Wealdstone U. D. C. v. Evershed*, and *Friern Barnet U. D. C. v. Adams*, on p. 577, *ante*.

Note to
Section 18.
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In a case which arose under a local Act the urban authority obtained a declaration that they were entitled to a charge on the defendant's premises for the costs incurred as private street expenses. An order was obtained directing an inquiry as to whether there were other incumbrances, and directing the defendant to answer the inquiry by affidavit. The defendant ignored this order and failed to appear in obedience to an order for his examination. It was held that a writ of attachment must issue against him for disobeying the order and that the urban authority might add the costs of the motion for attachment to their security (*Tottenham U. D. C. v. Nielsen* (1915), 79 J. P. 504; 85 L. J. Ch. 272; 26 Digest 551, 2473).

The authority have power to sell the premises under this section and s. 101 of the Law of Property Act, 1925, Vol. V., *post*, when a sum charged on premises has been ordered to be paid by instalments and there has been default in the payment of one instalment in order to discharge the instalment in arrear with interest and costs (*Payne v. Cardiff R. D. C.*, [1932] 1 K. B. 241; 95 J. P. 173; Digest Supp.).

As to the extent of the land subject to the charge where adjoining plots have been purchased by the owner at different times, see *Altrincham U. D. C. v. O'Brien* (1927), 91 J. P. 149; 25 L. G. R. 369; Digest Supp. The charge affects the total ownership of the land charged, see *Birmingham Corporation v. Baker*, and other cases cited therewith, at p. 605, *ante*.

Where a tenant for life has paid paving expenses he has a charge on the fee simple of the premises, notwithstanding the provisions of s. 17, *post*, p. 4866, which provides that a limited owner may raise money by mortgage for the payment of such expenses so that the principal due on the mortgage may be repaid within twenty years (*In re Pizzi, Scrieuer v. Aldridge*, [1907] 1 Ch. 67; 71 J. P. 58; 26 Digest 546, 2438).

A council executed street works under this Act, but when recovering their expenses were unable to determine the ownership of certain vacant land abutting on the street. The land, therefore, was sold, under the powers of s. 13, and the council found themselves with a surplus. The L. G. B., on being applied to, stated that they did not consider themselves in a position to give any formal directions in such a case, but, assuming that the council recovered "in respect of street works" in the case of every frontager all that was sufficient to enable them to repay with interest the money borrowed for the execution of the works in respect of which the premises were charged under the final apportionment, as the instalments became due and payable, they referred the council to s. 21 (3) of the Conveyancing and Law of Property Act, 1881 (no repealed and reproduced in s. 105, Law of Property Act, 1925, Vol. V., *post*), as applied by s. 13 (1), as indicating what would appear to be an appropriate application of the surplus sum in question. The sub-section is as follows: "The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior encumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof." See hereon *West London Commercial Bank v. Reliance Permanent Building Society* (1885), 29 Ch. D. 954; 35 Digest 519, 2477.

(a) The rate of interest is now "five per cent. or such other rate of interest as the Minister of Health may from time to time by order fix" (s. 77, P. H. A., 1925, Vol. V., *post*). The present rate is 4 per cent. (see *ante*, pp. 3191, 4862).

Section 13. (2) The urban authority shall keep a register of charges under this Act and of the payments made in satisfaction thereof, and the register shall be open to inspection to all persons at all reasonable times on payment of not exceeding one shilling in respect of each name or property searched for, and the urban authority shall furnish copies of any part of such register to any person applying for the same on payment of such reasonable sum as may be fixed by the urban authority.

It is submitted that this sub-section is in effect obsolete in consequence of the provisions of the Land Charges Act, 1925, Vol. V., *post*. Charges under this section now require registration as "local land charges" under s. 15 of that Act, and the necessity for this sub-section no longer arises. In respect of charges arising prior to the passing of the 1925 Act, provision is made by r. 14 of the Local Land Charges Rules, 1934, *ante*, p. 3181, whereby charges registered in existing registers (which would include the register kept under this section) may be regarded as sufficient compliance with the Rules if the register contains the particulars required by the Rules and is open to inspection.

Recovery of
expenses
summarily
or by action.

14. The urban authority, if they think fit, may from time to time (in default and without prejudice to any other remedy) recover summarily in a court of summary jurisdiction, or as a simple contract debt by action in any court of competent jurisdiction, from the owner for the time being of any premises in respect of which any sum is due for expenses of private street works the whole or any portion of such sum, together with interest at a rate not exceeding *four (a)* pounds per centum per annum, from the date of the final apportionment till payment thereof.

Under the P. H. A., 1875, s. 150, *ante*, p. 4388, the only remedies for recovery of expenses were by summary proceedings, or, in cases where the expenses were under £50, by action in the county court under s. 261, *ante*, p. 4491. See the note at p. 4408, *ante*. Under this Act an action may be brought in the High Court if it is thought desirable. It would seem that the six months' limitation imposed by the S. J. A., 1848, s. 11 (11 Halsbury's Statutes 278), does not apply to actions brought in either the High Court or the county court under this section (*Blackburn (Mayor, etc. of) v. Sanderson*, [1902] 1 K. B. 794; 66 J. P. 452; 26 Digest 548, 2452; cf. *Metropolitan Water Board v. Bunn*, [1913] 3 K. B. 181; 77 J. P. 353; 38 Digest 119, 860). In previous editions the opinion was expressed that the period of limitation was probably twenty years, as the action would seem to be founded on a specialty, and reference was made to a note by Sir F. POLLOCK at [1903] 2 K. B. 3, and cases there cited, and *In re Cornwall Minerals Rail. Co.*, [1897] 2 Ch. 74; 61 J. P. 535; 10 Digest 1192, 8458, but in *Dennerley v. Prestwich U. D. C.* (1929), 45 T. L. R. 493, SHEARMAN, J., "pointed out that as the section made the claim equivalent to a simple contract debt the period of limitation applicable would be only six years." This period runs only from the date of demand and as a new demand may be made on each successive owner, the statute only runs in favour of each owner from the date of demand upon him (*ibid.*, in C. A., [1930] 1 K. B. 334). There is no express provision in the Act requiring a formal demand for payment unless an authority intend to proceed summarily (see *per* BRETT, L.J., in *R. v. Local Government Board*, *ante*, at p. 611), but it may well be argued that one is necessary: see *Hampstead Corporation v. Caunt*, [1903] 2 K. B. 1; 67 J. P. 344; 26 Digest 499, 2076. The expenses being recoverable from the owner "for the time being," a purchaser may become liable for expenses incurred before the date of the purchase: see *East London Waterworks Co. v. Kellerman*, [1892] 2 Q. B. 72; 56 J. P. 773; 43 Digest 1093, 242; *Rowland v. Willis* (1899), 105 L. T. Newsp. 319, and *Hampstead Borough Council v. Caunt*, *supra*.

No objection to the proceedings of the authority, which could have, but has not been raised under the Act can afterwards be raised when the authority seek to recover.

the expenses. See s. 8 (2), *ante*, p. 4858, *Teddington U. D. C. v. Vile*, and other cases cited therewith, at p. 4854, *ante*.

In *Hayles v. Sandown U. D. C.*, *ante*, p. 4854, a frontager, against whom proceedings were taken before justices to recover his apportioned share of the expenses, attempted to establish that the surveyor had allowed the contractor to deviate from the specifications, and that the works had never been "completed." It was held that such an objection could probably have been raised under s. 12, *ante*, p. 4861, at the proper time; but that, in any case, the justices were right in not allowing it to be raised before them.

Semble, the right of action given by this section could only be enforced in the courts of this country (*Sydney Municipal Council v. Bull*, [1909] 1 K. B. 7; 11 Digest 307, 6).

(a) The rate of interest is now "five per cent. or such other rate of interest as the Minister of Health may from time to time by order fix" (s. 77, P. H. A., 1925, Vol. V., *post*). The present rate is 4 per cent. (see *ante*, pp. 3191, 4862).

15. The urban authority, if they think fit, may at any time resolve to contribute the whole or a portion of the expenses of any private street works, and may pay the same out of the district fund or general district rate or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable.

Contribution by urban authority to expenses.

No provision of this kind was included in the P. H. A., 1875, *ante*, p. 4331, and under that Act a council could not defray part of the expenses out of the rates (see *Dryden v. Putney (Overseers of)*, *ante*, p. 4412). Power to contribute under that Act was given by s. 81 of the P. H. A., 1925, Vol. V., *post*. The general expenses were made payable out of the general rate or general rate fund, but the concluding words of the section were repealed by the L. G. A., 1933, and the general provisions of that Act substituted (see *ibid.*, ss. 181, 185, 188, *ante*, pp. 1009, 1013, 1015). As to contributions by rural district councils, see s. 36 (2) (b), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 912.

The discretion as to contributions under this section can only be exercised by the local authority, and accordingly it is not open to justices on the hearing of objection to a provisional apportionment to amend the resolution under s. 8 (1), *ante*, p. 4857, by including a contribution by the local authority under this section to the cost of the works (*Chester Corporation v. Briggs*, [1924] 1 K. B. 239; 88 J. P. 1; 26 Digest 547, 2447). In an unreported case, referred to in an article at 90 J. P. N. 486, it was held that the justices have no power under s. 8 to alter the amount of any contribution which the local authority have resolved to make under this section. Nor can they, by reducing the apportionment against individual frontagers, indirectly do that which they cannot do directly (*Chatham Corporation v. Wright* (1930), 94 J. P. 43; 28 L. G. R. 4; Digest Supp.).

16. The incumbent or minister or trustee of any church, chapel, or place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor, shall not be liable to any expenses of private street works as the owner of such church, chapel, or place, or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process, but the proportion of expenses in respect of which an exemption is allowed under this section shall be borne and paid by the urban authority.

Exemption from expenses of incumbent of church.

This section is in substitution for the P. H. A., 1875, s. 151, *ante*, p. 4445; but there are some points of difference which should be noted. It exempts not only

Note to Section 14.

**Note to
Section 16.**

incumbents and ministers, but trustees also, thus meeting the decision in *Hornsey L. B. v. Brewis*, *ante*, p. 4421. And the text requires, not simply enables, the authority to bear the proportion in respect of which an exemption is allowed. As to the exemption of churches, chapels, etc., from poor rates, see note (a), *ante*, pp. 4420 *et seq.*, and *Walton-le-Dale v. Greenwood* there cited, a case decided under this Act.

The expression "private street works" is defined in s. 6, *ante*, p. 4851.

As to the meaning of the words "churchyard or burial ground attached thereto," see *Holy Law, etc. Burial Board v. Failsworth U. D. C.*, [1928] 1 K. B. 231; 91 J. P. 104; Digest Supp. The attachment must be physical, it is not enough that a burial ground at a distance is maintained by the members of a congregation. A piece of vacant land adjoining a building appropriated to religious worship, and on which a Sunday school is to be erected, is not to be excluded from provisional apportionment under this section (*Ilford Corpn. v. Mallinson* (1932), 96 J. P. 185; Digest Supp.).

Power for
limited
owners to
borrow for
expenses.

17. All owners of buildings or lands, being persons who under the Lands Clauses Acts are empowered to sell and convey or release lands, may charge such buildings or lands with such sum as may be necessary to defray the whole or any part of any expenses which the owners or or any persons in respect of such buildings or lands for the time being are liable to pay under this Act and the expenses of making such charge, and for securing the repayment of such sum with interest may mortgage such buildings or lands to any person advancing such sum, but so that the principal due on any such mortgage shall be repaid by equal yearly or half-yearly payments within twenty years.

See the Lands Clauses Consolidation Act, 1845, ss. 7, 8, *ante*, pp. 4107, 4108, as to the persons under disability or limited owners, such as tenants for life, who have power to sell and convey or release lands under that Act.

Under this section a limited owner may charge or mortgage the premises, and not merely his interest in them.

Where a tenant for life has paid to a local authority the expenses of paving a private street, he has a charge under s. 13, *ante*, p. 4862, on the fee simple of the premises in respect of which the expenses were incurred, notwithstanding the provisions of this section (*In re Pizzi, Scrivener v. Aldridge*, *ante*, p. 4863).

Power
for urban
authority to
borrow for
private street
works.

18. The urban authority may from time to time, with the sanction of the Local Government Board, borrow, *on the security of the district fund and general district rates or other rate out of which the general expenses incurred under the Public Health Act, 1875, are payable*, moneys for the purpose of temporarily providing for expenses of private street works, *and the powers of the urban authority to borrow under the Public Health Acts shall be available as if the execution of private street works under this Act were one of the purposes of the Public Health Act, 1875.*

The words printed in italics were repealed by the L. G. A., 1933, *ante*, and equivalent powers are now contained in *ibid.*, s. 195, *ante*, p. 1023.

Applications to the Ministry of Health under this section must be accompanied by a copy of the resolution of the council authorising it, and by certain particulars in a prescribed form. The Minister used rarely to allow a longer term than seven years for repayment, but ten years is now allowed, upon the understanding that a similar period is allowed to frontagers for repayment of the cost to the authority.

Adoption
of private
streets.

19. Whenever all or any of the private street works in this Act mentioned have been executed in a street or part of a street, and the urban authority are of opinion that such street or part of a street ought to become a highway repairable by the inhabitants at large, they may by notice to be fixed up in such street or part of a street declare the whole

of such street or part of a street to be a highway repairable by the inhabitants at large, and thereupon such street or part of a street as defined in the notice shall become a highway repairable by the inhabitants at large. Section 19.

This section does not extend to making the site on which a wall stands a highway repairable by the inhabitants at large; and a local authority cannot, acting under this section, remove the end wall of what is physically a cul-de-sac, thereby making it a continuous street with another on the other side of the boundary wall (*Urban Housing Co., Ltd. v. Oxford Corporation*, [1940] Ch. 70; [1939] 4 All E. R. 211; 104 J. P. 15; Digest Supp.). The council can only make up the street as they find it (*Robertson v. Bristol Corporation*, ante, p. 4852).

The fact that a private street has been made up at the cost of the frontagers does not in itself (i.e. apart from formal adoption) confer any rights as against the owner of the soil upon either the public or frontagers who have paid their share (*Moubray, Rowan and Hicks v. Drew*, [1893] A. C. 295; 26 Digest 518, b). See also as to rights in a private street, *Kirby v. Paignton U. D. C.*, p. 4393, ante.

This section is in substitution for the P. H. A., 1875, s. 152, ante, p. 4423, or, where the P. H. A. Amendment A., 1890, has been adopted, for s. 41 of that Act, ante, p. 4815.

It is to be observed, however, that under this section the works need not have been executed by the authority, nor can the owners of the street object to its being declared a highway repairable by the inhabitants at large. Under this Act, therefore, a street in all respects private may be opened for public traffic without the consent of the owners, and possibly to their detriment.

An authority will have no discretion under this section if a street has been made up in pursuance of a request made by a majority of the owners under the P. H. A. Amendment A., 1907, s. 19 (4), post, p. 5047.

A form of notice will be found in the Encyclopædia of Forms and Precedents, Vol. XII., p. 584.

Local authorities must keep a list of all streets in their district repairable by the inhabitants at large and permit inspection of the list without payment (P. H. A., 1925, s. 84, Vol. V. and 13 Halsbury's Statutes 1153).

20. If any street is now or shall hereafter be sewered, levelled, paved, metalled, flagged, channelled, and made good (all such works being done to the satisfaction of the urban authority), then, on the application in writing of the greater part in value of the owners of the houses and land in such street, the urban authority shall, within three months from the time of such application, by notice put up in such street, declare the same to be a highway repairable by the inhabitants at large, and thereupon such street shall become a highway repairable by the inhabitants at large. On street being paved, etc., urban authority to declare same public highway.

A form of application and notice for use under this section will be found in the Encyclopædia of Forms and Precedents, Vol. XII., pp. 585, 586.

This section will apply only when all the works above mentioned have been executed in the street. The expression "houses and land in such street" avoids the ambiguity pointed out in the note to s. 41 (2) of the Act of 1890, ante, p. 4816. The authority will have no discretion under this section. A provision similar in its terms to this section now applies to proceedings under s. 150, P. H. A., 1875, ante, p. 4388; see s. 82 of the P. H. A., 1925, Vol. V. and 13 Halsbury's Statutes 1153.

An application under this section will not be necessary when an authority make up a street in consequence of a counter-notice from owners under the P. H. A. Amendment A., 1907, s. 19 (4), post, p. 5047.

See, as to keeping a list of all streets repairable by the inhabitants at large, P. H. A., 1925, s. 84, Vol. V., post, referred to in the note to the preceding section.

Where a declaration is made under this section in respect of a street, part of which is outside the district of the authority, the declaration is not severable but is wholly invalid (*Newton v. Lambton Hetton and Joicey Collieries, Ltd.*, [1937] 2 All E. R. 150; 35 L. G. R. 607).

Section 21.

Separate
accounts of
expenses of
works.

21.—(1) The urban authority shall keep separate accounts of all moneys expended and recovered by them in the execution of the provisions of this Act relating to private street works.

(2) All moneys recovered by the urban authority under this Act in respect of street works shall be applied in repayment of moneys borrowed for the purpose of executing private street works (a), or if there is no such loan outstanding then in such manner as may be directed by the Local Government Board (b).

(a) The authority may borrow for private street works under s. 18, *ante*, p. 4866. If any loan in respect of private street works in the district is outstanding, the subsection must be complied with. This must sometimes work inconveniently.

(b) The Minister of Health will presumably direct payment into the general rate fund.

Railways
and canals
abutting but
not com-
municating
with streets
not to be
chargeable
with private
street
expenses.

22. No railway or canal company shall be deemed to be an owner or occupier for the purposes of this Act in respect of any land of such company upon which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal, or siding, station, towing path, or works, and shall have no direct communication with such street (a); and the expenses incurred by the urban authority under the powers of this Act which, but for this provision, such company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments, and in such proportion as shall be settled by the surveyor (b); and in the event of such company subsequently making a communication with such street they shall, notwithstanding such repayment as last aforesaid, pay to the urban authority the expenses which, but for the foregoing provision, such company would in the first instance have been liable to pay, and the urban authority shall divide among the owners for the time being included in the apportionment the amount so paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision shall be final and conclusive (c). This section shall not apply to any street existing at the date of the adoption of this Act.

(a) This provision is intended to meet the decisions in *Higgins v. Harding and L. & N. W. Rail. Co. v. St. Pancras (Vestry of)*, *ante*, p. 4401, followed in *Caledonian Rail. Co. v. Edinburgh Magistrates* (1901), 3 F. (Ct. of Sess.) 645. It will only apply where there is no communication between the railway and the street.

A railway company objected to the inclusion of a piece of land belonging to them in a provisional apportionment for a street on which the land abutted, but with which it had no direct communication, on the ground that such land was at the time of the laying out of the street used by them solely as a part of their line of railway or works within the meaning of this section. The land had been acquired by the company solely for the purpose of their railway and works, but they allowed their servants, for the time being, to use it as garden ground on payment of a nominal rent. The justices found as a fact that it was not used in any way as part of the company's railway, sidings, station or works, and that, therefore, the company's objection failed, and they refused to state a case on the ground that the question was one of fact. It was held that as there was no evidence contrary to the justices' finding, the court would not compel them to state a case (*R. v. Jones and Barry U. D. C., Ex parte Mein* (1907), 71 J. P. 326; 96 L. T. 723; 26 Digest 542, 2401).

It has also been held that land used by a railway company for the purpose of depositing ashes thereon did not fall within a similarly worded exemption in a local

Act (*In re Carlisle Corporation and Saul's Executors* (1907), 71 J. P. 502; 97 L. T. 514; Digest Supp.).

**Note to
Section 22.**
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See also, as to words "part of a railway," *Glasgow & S. W. Rail. Co. v. Ayr Magistrates*, [1912] A. C. 520, where under the Burgh Police (Scotland) Act, 1892, s. 4, it was held that a strip of a road purchased in 1889 by the company for "extraordinary purposes," but put to no use for 20 years, was not a part of their railway.

(b) This is rather hard on the owners in question. The sum which otherwise would have been apportioned to the company is to be paid by other owners in proportions settled by the surveyor. The whole of the expenses are not to be apportioned in the first instance among all the owners other than the company.

(c) No provision is here made for the case where there have been changes of ownership.

23. *All expenses incurred or payable by an urban authority and a rural sanitary authority respectively in the execution of this Act, and not otherwise provided for, may be charged and defrayed as part of the expenses incurred by them respectively in the execution of the Public Health Acts.* Expenses of local authority.

This section was repealed by the L. G. A., 1933, *ante*, and the general provisions of that Act substituted (see *ibid.*, ss. 181, 185, 188, *ante*, pp. 1009, 1013, 1015).

24. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed. Powers of Act cumulative.

This section preserves the effect of local Acts, and where there is such an Act in force the authority will have an alternative remedy. Compare the P. H. A., 1875, s. 341, *ante*, p. 4522, and the P. H. A. Amendment A., 1890, s. 10 (1), *ante*, p. 4806.

25. Neither sections one hundred and fifty, one hundred and fifty-one, and one hundred and fifty-two of the Public Health Act, 1875, nor section forty-one of the Public Health Acts Amendment Act, 1890, shall apply to any district or part of a district in which this Act is in force. Certain sections of Public Health Acts not to apply.

This Act when in force takes the place of the sections named in the text. But proceedings already commenced under s. 150 are not made void by the adoption of this Act (*Heston and Isleworth U. D. C. v. Grout*, [1897] 2 Ch. 306; 26 Digest 539, 2387).

When an urban authority have adopted the Act the adoption cannot afterwards be revoked, so that they will no longer be able to exercise in any case powers under ss. 150 and 152 of the Act of 1875, *ante*, pp. 4388, 4423.

26. This Act shall not extend to prejudice or derogate from the estates, rights, and privileges of the Conservators of the River Thames, or render them liable to any charges or payments in respect of any of their works on or upon the shores of the River Thames. For protection of Conservators of River Thames.

See the Thames Conservancy Act, 1932.

As to that part of the Thames within the Port of London, the Port of London Authority are now the Conservators (Port of London (Consolidation) Act, 1920).

Schedule.

Part 1.

THE SCHEDULE.

PRIVATE STREET WORKS.

Sections 6, 11.

PART I.

PARTICULARS TO BE STATED IN SPECIFICATIONS, PLANS AND SECTIONS, ESTIMATES, AND PROVISIONAL APPORTIONMENTS.

Specifications.—These shall describe generally the works and things to be done, and in the case of structural works shall specify as far as may be the foundation, form, material, and dimensions thereof.

Plans and Sections.—These shall show the constructive character of the works, and the connexions (if any) with existing streets, sewers, or other works, and the lines and levels of the works, subject to such limits of deviation (if any) as shall be indicated on the plans and sections respectively.

Estimates.—These shall show the particulars of the probable cost of the whole works, including the commission provided for by this Act.

Provisional Apportionments.—These shall state the amounts charged on the respective premises and the names of the respective owners, or reputed owners (*a*), and shall also state whether the apportionment is made according to the frontage of the respective premises or not, and the measurements of the frontages, and the other considerations (if any) on which the apportionment is based.

The M. of H. announced in their Annual Report for 1924—25 that in view of the increase in the cost of street works since the Great War and the consequently increased burden upon frontagers in private streets their technical advisers had been in consultation with the Institution of Municipal and County Engineers with the result that a standard specification of reasonable requirements in normal circumstances had been agreed with the institution. This standard specification was published in the Journal of the Institution on June 17th, 1924.

(*a*) This expression means “a person whom the local authority really believe to be the owner; and a person who has been the owner, and whom the local authority has dealt with as such, is certainly a reputed owner” (*per* CHANNELL, J., in *Wirral R. D. C. v. Carter*, [1903] 1 K. B. 646; 67 J. P. 31; 26 Digest 543, 2409).

PART II.

PUBLICATION OF NOTICE.

Any resolution, notice, or other document required by this Act to be published in the manner prescribed by this Schedule shall be published once in each of two successive weeks in some local newspaper circulating within the district, and shall be publicly posted in or near the street to which it relates once at least in each of three successive weeks (*a*).

(*a*) It is not necessary that seven days should intervene between successive publications (*Aberdeen (City of) v. Watt* (1901), 3 F. (Ct. of Sess.) 787).

THE PUBLIC WORKS LOANS ACT, 1892.

Section 2.

(55 & 56 VICT. c. 61) (a).

An Act to grant Money for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [28th June, 1892.]

* * * * *

2. Section ten of the Public Works Loans Act, 1875 (b), and section two of the Public Works Loans Act, 1879 (c) (which sections fix the minimum rate of interest on loans), shall, in their application to loans granted after the passing of this Act, have effect as if four per cent. were therein substituted for five per cent.

Reduction of minimum rate of interest on loans.
38 & 39 Vict. c. 89.
42 & 43 Vict. c. 77.

(a) This Act amends the Public Works Loans Act, 1875, *ante*, p. 4544, and the Public Works Loans Act, 1879, *ante*, p. 4619. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020).

(b) *Ante*, p. 4548.

(c) *Ante*, p. 4619.

* * * * *

9. This Act may be cited as "The Public Works Loans Act, 1892."

Short title.

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THE PUBLIC LIBRARIES (AMENDMENT) ACT, 1893.

(56 & 57 VICT. c. 11) (a).

An Act to amend the Public Libraries Act, 1892. [9th June, 1893.]

1. This Act may be cited as "The Public Libraries (Amendment) Act, 1893," and shall be construed as one with the Public Libraries Act, 1892 (in this Act referred to as the principal Act), and these two Acts may be together cited as the *Public Libraries Acts, 1892 and 1893.*

Short title.
55 & 56 Vict. c. 53

(a) See the Public Libraries Act, 1892, *ante*, p. 4840, the Libraries Offences Act, 1898, *post*, p. 4948, the Public Libraries Act, 1901, *post*, p. 4995, and the Public Libraries Act, 1919, *post*, p. 5238. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020). Italicised words repealed by S. L. R. A., 1908 (*op. cit.* 1175).

2.—(1) Where a library district is an urban district—

(i) The principal Act may, *subject to the conditions contained in the second section of that Act* be adopted, and the limitation of the maximum rate to be levied for the purposes of that Act may *within the limits fixed by that Act* be fixed, raised, or removed (a), by a resolution of the urban authority under this Act:

Modification as to adoption, etc., in urban districts.

(ii) The consent of the urban authority given by a resolution of that authority under this Act shall be substituted in an urban district for the consent of the voters in any case when the consent of the voters is required under the principal Act.

(2) Section three of the principal Act is hereby repealed, so far as it relates to an urban district.

(a) The words in italics were repealed by Public Libraries Act, 1919, *post*, p. 5238.

3. (a).

(a) Section 3, which contained provisions for a resolution of an urban authority for the adoption, etc., of the principal Act, *ante*, p. 4840, was repealed by Public Libraries Act, 1919, s. 7, *post*, p. 5246. A simple resolution is alone required in an urban district.

Section 4.

Power to two or more library authorities to combine.

4.—(1) Where the principal Act is adopted for two or more neighbouring urban districts, the library authorities of those districts may by agreement combine (a) for any period for carrying the Act into execution; and the expenses of carrying the Act into execution shall be defrayed by such authorities in such proportions as may be agreed on by them.

(2) For the purposes of the Act a joint committee may be formed, the members whereof shall be appointed by the several combining authorities in such proportions as may be agreed on, but need not be members of any of the combining authorities. Any such committee shall have such of the powers of a library authority under the principal Act, except the power of borrowing money (b), as the combining authorities may agree to confer upon them.

(3) Where any of the combining authorities are improvement commissioners or a local board the provisions of the principal Act with respect to accounts and audit shall apply to such committee as if they were a local board who were a library authority under the Act (c).

(a) Power to neighbouring parishes to combine was given by the Public Libraries Act, 1892, *ante*, p. 4840. But see now L. G. A., 1933, ss. 91, 219, *ante*, pp. 854, 1057.

(b) See Public Libraries Act, 1892, s. 19, *ante*, p. 4846.

(c) See Public Libraries Act, 1892, s. 20, *ante*, p. 4846.

THE RIVERS POLLUTION PREVENTION ACT, 1893.

(56 & 57 VICT. c. 31).

An Act to explain the Rivers Pollution Prevention Act, 1876.

[27th July 1893.]

See the Rivers Pollution Prevention Act, 1876, *ante*, p. 4581, and the Rivers Pollution Prevention (Border Councils) Act, 1893, *post*, p. 4947. This Act appears to provide for a case like that before the court in *Att.-Gen. v. Dorking Union Guardians*, *ante*, p. 97, where it was held that proceedings under the Rivers Pollution Prevention Act, 1876, could not be taken against a local authority merely because a sewer vested in them polluted a stream, they themselves not having constructed or interfered with the sewer. See the notes to s. 3 of the Rivers Pollution Prevention Act, 1876, *ante*, p. 4583, and especially *Rockford R. D. C. v. Port of London Authority*, *ante*, p. 4585. The mere fact that a sewer is vested in a local authority under s. 20 of the P. H. A., 1936, *ante*, p. 47, does not make the local authority *ipso facto* liable for the discharge of sewage matter from the sewer into a brook (*Waltham Holy Cross U. D. C. v. Lea Conservancy Board* (1910), 74 J. P. 253; 103 L. T. 192; 44 Digest 47, 329, which was decided under a special Act; *Titterton v. Kingsbury Collieries, Ltd.* (1911), 75 J. P. 295; 104 L. T. 569; 41 Digest 35, 259).

Explanation of 39 & 40 Vict. c. 75, s. 3, as to drainage into streams.

1. Where any sewage matter falls or flows or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall, for the purposes of section three of the Rivers Pollution Prevention Act, 1876, be deemed to knowingly permit the sewage matter so to fall, flow, or be carried.

As to what sewers are vested in a local authority, see the P. H. A., 1936, s. 20, and the notes to that section, *ante*, p. 47. See also *West Riding Rivers Board v. Linthwaite U. D. C.*, *ante*, p. 101.

Construction and short title.

2. This Act shall be construed as one with the Rivers Pollution Prevention Act, 1876; and the Rivers Pollution Prevention Act, 1876, and this Act may be cited for all purposes as the Rivers Pollution Prevention Acts, 1876 and 1893.

THE BARBED WIRE ACT, 1893.

(56 & 57 VICT. c. 32) (a).

An Act to prevent the use of Barbed Wire for Fences in Roads, Streets, Lanes, and other Thoroughfares (b). [27th July, 1893].

1. This Act may be cited for all purposes as "The Barbed Wire Act, Short title. 1893."

(a) This Act concerns local authorities more in their capacity as highway authorities than as sanitary authorities.

A landowner erected upon his own land by the side of a public road in Scotland a fence of barbed wire, and the road trustees brought an action to have it removed on the ground that it was dangerous to persons and cattle lawfully using the road. The fence was placed about three feet from the boundary line between the road and the landowner's property, and stood entirely upon his land:—*Held*, that the action lay, but upon the defender undertaking so to alter and protect the fence as to remove the danger, the action was dismissed (*Elgin Road Trustees v. Innes* (1886), 14 Ct. Sess. Cas. (4th ser.) 48). The occupier of certain land adjoining a public footpath fenced it off from the footpath by barbed wire set back nine feet from the path:—*Held*, that he was liable in damages to a man who tore his clothes on the barbs whilst making way for other persons to pass him on the footpath (*Bird v. Frost* (1892), 56 J. P. 164). Plaintiff and defendant were adjoining landowners, and defendant was bound to maintain a boundary fence between their lands for their mutual benefit. Defendant caused a gap in the fence to be made up with barbed wire which was placed three feet within his own boundary. Plaintiff afterwards put a mare into his field, and she injured herself on the wire:—*Held*, that the wire was so placed as to be dangerous to cattle lawfully put by the plaintiff into his field, and that defendant was liable in damages for the injury to the mare (*Bennett v. Blackmore* (1890), 26 L. J. Newsp. 228; 90 L. T. N. 395 (Crediton County Court)). Defendants erected a fence of barbed wire between their railway line and plaintiff's farm. Sheep grazing on plaintiff's farm were injured by coming in contact with the wire:—*Held*, that the defendants were liable for the damage occasioned to the sheep (*McQuillan v. Crommelin Iron Ore Co.* (1892), 26 Ir. L. T. Rep. 15). Lands belonging to plaintiff and defendant, who were adjoining owners, were separated by an old quickset fence. This hedge the defendant dug up and replaced by a new one of young quicks, which he protected by a barbed wire fence of a very severe character, set up with the plaintiff's acquiescence on plaintiff's land. Plaintiff then turned out a mare to graze on his land, and she was injured:—*Held*, that the defendant was liable (*Shipton v. Lucas* (1892), 92 L. T. N. 297). Defendant put up a barbed wire fence separating his land from a public footpath, and plaintiff was walking along the footpath when a sudden gust of wind blew his coat against the fence and it was torn. No negligence or want of skill or care in the erection of the fence was imputed to the defendant, but the county court judge held that the fence as constructed and placed was dangerous to the public using the footpath and a nuisance. This decision was affirmed on appeal to the High Court (*Stewart v. Wright* (1893), 57 J. P. 137; affirmed 9 T. L. R. 480; 7 Digest 286, 153). And in an Irish case of *Collen v. Ellis* (1893), 32 L. R. Ir. 491, it was held that a barbed wire fence by the side of a highway may be an obstruction to the free passage thereof.

A valuable collection and review of the American cases on the subject will be found in 95 L. T. Jo. 419.

Upon similar principles a rotten fence abutting a highway is a nuisance, and if it be the cause of any accident, the owner of the fence is liable (*Harrold v. Watney*, [1898] 2 Q. B. 320; 36 Digest 69, 443). But a defendant is not liable in respect of a nuisance created on his premises by trespassers (*Barker v. Herbert*, [1911] 2 K. B. 633; 75 J. P. 481; 36 Digest 197, 374), if he does not, and cannot reasonably be expected to know of its existence. This case was distinguished in *Horridge v. Makinson* (1915), 79 J. P. 484; 84 L. J. K. B. 1294; 26 Digest 542, 2407. And see *Robbins v. Jones*, ante, p. 4211, and *Sedleigh-Denfield v. O'Callaghan*, [1940] A. C. 880; [1940] 3 All E. R. 349; Digest Supp.

(b) This title must not be taken to limit the meaning of the term "highway" as used in the Act. A *cul-de-sac* may be a highway (*Bateman v. Bluck* (1852), 18 Q. B. 870; 17 J. P. 4; 26 Digest 263, 41; *Young v. Cuihbertson* (1854), 1 Macq. 455; 26 Digest 264, 43).

2. In this Act—

The expression "barbed wire" means any wire with spikes or jagged projections; and the expression "nuisance to a highway" as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using such highway:

Interpretation.

Section 2.

In England and Wales the expression "local authority" means any county council, any urban sanitary authority, any sanitary authority in London, *any highway board*, and any *other* local authorities existing, or that may be hereafter created by Parliament, having control over highways (a).

(a) Italicised words repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175). The remainder of this section only applies to Scotland and Ireland. The Act no longer applies to rural district councils whose highway functions ceased on their transference to county councils by the L. G. A., 1929, s. 30, Vol. V. and 10 Halsbury's Statutes 904.

Removal of
barbed wire
where nuisance
to highway.

3.—(1) Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and such barbed wire is a nuisance to such highway, it shall be lawful for such local authority to serve (a) notice in writing upon the occupier of such land requiring him within a time therein stated (not to be less than one month nor more than six months after the date of the notice) to abate such nuisance.

(2) If on the expiration of the time stated in the notice the occupier shall have failed to comply therewith, it shall be lawful for the local authority to apply to a court of summary jurisdiction (b), and such court, if satisfied that the said barbed wire is a nuisance to such highway, may by summary order (c) direct the occupier to abate such nuisance; and on his failure to comply with such order within a reasonable time the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses incurred in connexion therewith (d).

(a) As to service of notices, see s. 26 of the Highway Act, 1864 (9 Halsbury's Statutes 150). And upon the whole text compare s. 93 of the P. H. A., 1936, *ante*, p. 300.

(b) As defined by s. 13 (11) of the Interpretation Act, 1889 (18 Halsbury's Statutes 997).

(c) Without appeal, except by case stated under s. 33 of the Summary Jurisdiction Act, 1879 (11 Halsbury's Statutes 341).

(d) The next sub-section relates only to Ireland.

Proceedings
where local
authority is
occupier of the
land.

4. Where the local authority are the occupiers of the land, proceedings under this Act may be taken by any ratepayer within the district of the local authority, and a notice to the local authority to abate the nuisance shall be deemed to be properly served if it is served upon the clerk of the local authority, and any ratepayer taking proceedings may do all acts and things which a local authority is empowered to do.

Expenses of
local authority.

5. Any expenses incurred by a local authority in the execution of this Act shall be defrayed in like manner as the expenses of the local authority incurred in respect of any highways (a).

(a) See L. G. A., 1933, ss. 181, 185, 188, 191, *ante*, pp. 1009, 1013, 1015, 1019.

THE LAW OF COMMONS AMENDMENT ACT, 1893.

Section 1.

(56 & 57 VICT. c. 57.)

An Act to amend the Law relating to Commons (a). [22nd September, 1893.]

1. This Act may be cited for all purposes as the "Law of Commons Amendment Act, 1893." Short title of Act.

(a) See the Commons Act, 1876, *ante*, p. 4563. Reference may also be made to the Law of Property Act, 1925, ss. 193 and 194, Vol. V. and 15 Halsbury's Statutes 371, 373.

2. An inclosure or approvement of any part of a common purporting to be made under the Statute of Merton (a) and the Statute of Westminster the Second (b), or either of such statutes, shall not be valid unless it is made with the consent of the Board of Agriculture (c). Consent of Board of Agriculture essential to inclosure.

(a) 1235; 2 Halsbury's Statutes 424.

(b) 1285; *op. cit.* 426.

(c) Now Minister of Agriculture and Fisheries.

3. In giving or withholding their consent under this Act, the Board (a) shall have regard to the same considerations, and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876 (b), to be taken into consideration, and held by the Board before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not. Conditions of consent.

(a) Now Minister of Agriculture and Fisheries.

(b) Commons Act, 1876, *ante*, p. 4563.

4. Nothing in this Act shall preclude his Majesty, his heirs and successors, or any person whatsoever whose rights or interests are affected by any inclosure or approvement, from taking any proceedings by way of information, action, or otherwise, for the abatement of such inclosure or approvement, and the protection of such rights and interests. Saving of existing rights.

THE PUBLIC AUTHORITIES PROTECTION ACT, 1893 (a).

(56 & 57 VICT. c. 61.)

An Act to generalise and amend certain statutory provisions for the Protection of Persons acting in the execution of Statutory and other Public Duties. [5th December 1893.]

1. Where [after the commencement of this Act] any action, prosecution, or other proceeding (b) is commenced in the United Kingdom against any person (bb) for any act done in pursuance, or execution, or intended execution of any Act of Parliament (c), or of any public duty or authority (d), or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, the following provisions shall (dd) have effect: Protection of persons acting in execution of statutory or other public duty.

(a) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof (e):

(b) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client (f):

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- (c) Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment (g) : but this provision shall not affect costs on any injunction in the action :
- (d) If, in the opinion of the court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding the court may award to the defendant costs to be taxed as between solicitor and client.

This section shall not affect any proceedings by any department of the Government against any local authority or officer of a local authority (h).

(a) This Act took the place of s. 264 of the P. H. A., 1875, and similar sections in other Acts, which it repealed. It abolished notice of action in every case, but limits the time within which proceedings may be instituted against a local authority. It was held applicable to an action in respect of a right of action accrued before it was passed (*The Ydun*, [1899] P. 236 ; 38 Digest 101, 727).

"Action,
prosecution,
or other
proceeding."

(b) It is rather doubtful if these words now amount to anything more than the single word "action." Formerly they were repeated in para. (a), but now do not appear in any of the paragraphs of the section or in s. 21 of the Limitation Act, 1939, Vol. V., *post* (see note (e), *post*, p. 4885). Consequently there now are no "following provisions" dealing with anything but actions. To such extent as they still have any effect, however, the words do not include interlocutory applications or appeals ; they include actions for an injunction or declaration, whether coupled with a claim for damages or not (*Fielden v. Morley Corporation*, [1900] A. C. 133 ; 64 J. P. 484 ; 38 Digest 120, 864 ; *Harrop v. Ossett Corporation*, [1898] 1 Ch. 525 ; 62 J. P. 297 ; 38 Digest 120, 863 ; *Toms v. Clacton U. D. C.* (1898), 62 J. P. 505 ; 38 Digest 107, 766 ; *Grand Junction Waterworks Co. v. Hampton U. D. C.* (1899), 63 J. P. 503 ; 15 T. L. R. 412 ; 38 Digest 112, 803 ; *Ambler v. Bradford Corporation*, *infra*). These cases were followed and approved in *Graigola Merthyr Co., Ltd. v. Swansea Corporation*, [1929] A. C. 344 ; 93 J. P. 121 ; 38 Digest 113, 804, in which the House of Lords held that the Act applied to a *quia timet* action. See, however, *Farquhar and Gill v. Aberdeen Magistrates*, [1912] S. C. 1294 ; 28 Digest 469, *q*, where the LORD PRESIDENT said that he did not see how the Act could be prayed in aid in a question of interdict, since the court can only grant interdict against a continuing wrong. And see also *Att.-Gen. v. West Ham Corporation*, [1910] 2 Ch. 560, at p. 570 ; 74 J. P. 406, at p. 408 ; 38 Digest 121, 873, where the court held that the Act applied in respect of Acts completed more than six months before action, but granted a declaration in respect of overdrafts from a bank which amounted to a continuing illegality. And see *Att.-Gen. v. Lewes Corporation*, [1911] 2 Ch. 495 ; 76 J. P. 1 ; 38 Digest 130, 959 ; *Hart v. St. Marylebone Borough Council* (1912), 76 J. P. 257.

The Act applies to claims by infants against a public authority (*Jacobs v. L. C. C., Shaw v. L. C. C.*, [1935] 1 K. B. 67 ; 99 J. P. 10 ; Digest Supp.).

An action for an account of fair tolls is within the Act (*Newcastle (Duke of) v. Workson U. D. C.*, [1902] 2 Ch. 145 ; 38 Digest 108, 775) ; but it has no application to an action *in rem* (*The Burns*, [1907] P. 137 ; 71 J. P. 193 ; 38 Digest 122, 894) ; nor to claims for compensation under the Workmen's Compensation Acts (*Fry v. Cheltenham Corporation* (1911), 76 J. P. 89 ; 81 L. J. K. B. 41 ; 38 Digest 123, 910), or under the Lands Clauses Acts (*Glasgow Corporation v. Miller* (1905), 13 Sc. L. T. 167), or indeed, it would seem, under any Act (*Delany v. Metropolitan Board of Works*, *post*, p. 4888 ; *Glasgow Corporation v. Smithfield and Argentine Meat Co.*, [1912] S. C. 364 (compensation for condemned meat). The Act does not apply to

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an action brought against a police authority for compensation under the Riot (Damages) Act, 1886 (12 Halsbury's Statutes 844) (*Kaufmann Brothers v. Liverpool Corporation*, [1916] 1 K. B. 860; 80 J. P. 223; 38 Digest 122, 899). Nor does it apply to an action for an indemnity brought against a public authority under s. 6 (2) of the Workmen's Compensation Act, 1906, by the employer of a workman injured by the negligence of the defendant's servant (*Tuckwood v. Rotherham Corporation*, [1921] 1 K. B. 526; 85 J. P. 101; 38 Digest 123, 911). Nor does it apply to proceedings for a rule *nisi* for *quo warranto* against a clerk claiming to act as returning officer (*R. v. Carter* (1904), 68 J. P. 466; 38 Digest 121, 887); nor to an application for a *certiorari* to quash an auditor's surcharge (*Roberts v. Battersea Borough Council* (1914), 78 J. P. 265; 38 Digest 119, 861). See also *R. v. L. G. C., Ex parte Swan & Edgar* (1927), Ltd. (1929), 141 L. T. 590; 45 T. L. R. 512; Digest Supp. Whether it applies to applications for a prohibition or a *mandamus* was discussed but not decided in *R. v. Kensington Income Tax Commissioners*, [1913] 3 K. B. 870; 38 Digest 121, 888. In *R. v. Hertford Union, Ex parte Pollard* (1914), 78 J. P. 405; 38 Digest 121, 884, AVORY, J., held that the now repealed six months' limitation did not apply to the prerogative writ of *mandamus*. See the decision of the Court of Appeal in *R. v. Port of London Authority, Ex parte Kynoch, Ltd.*, [1919] 1 K. B. 176; 83 J. P. 41; 38 Digest 121, 885; and see also *R. v. Marshland, Smeth and Fen District Commissioners*, [1920] 1 K. B. 155; 83 J. P. 253; 38 Digest 121, 886.

Where an action for damages for a personal injury was begun within the then limit of six months and after the expiration of the now repealed six months but before trial a motion to amend the amount of damages claimed was made, the amendment was allowed (*Mackie v. Glasgow Corporation*, [1924] S. L. T. 510), but after the expiration of the period neither the writ (*Marshall v. London Passenger Transport Board*, [1936] 3 All E. R. 83; Digest Supp.; *National Provincial Board v. Gaint*, [1942] 2 All E. R. 112) nor the statement of claim (*Batting v. London Passenger Transport Board*, [1941] 1 All E. R. 228) can be amended so as to raise a fresh cause of action.

It appears to be somewhat doubtful whether the Act applies to a case in which a claim to land is in question. See *Cross v. Rix* (1912), 77 J. P. 84; 29 T. L. R. 85; 38 Digest 121, 876. Where an authority procured themselves to be added as defendants in an action, it was held that it had not been "commenced" against them, and that the Act did not apply to it (*McRobert v. Reid* (1914), 51 Sc. L. R. 500).

(bb) The protection of the Act extends to municipal or local authorities in the "Any execution of duties not strictly municipal or official, but arising in connection with person." commercial enterprises which they are empowered by Parliament to undertake, such as building a hospital (*Harrop v. Ossett*, ante, p. 4876), supplying water (*Fielden v. Morley Corporation*, ante, p. 4876), or acting as a port and harbour authority (*The Ydun*, ante, p. 4876), or as a tramway authority (*Parker v. London C. C.*, infra; *Lyles v. Southend-on-Sea Corporation*, p. 4880, post; *Spittal v. City of Glasgow Corporation* (1904), 6 F. (Ct. of Sess.) 828; 38 Digest 129, i).

In *The Johannesburg*, [1907] P. 65; 38 Digest 103, 733, where many of the previous decisions were reviewed, it was argued that the Act only applied to persons exercising powers on behalf of the public as a whole, such as a municipal corporation, and did not apply to a port authority (the Tyne Commissioners), but the argument did not prevail. The Act applies to an authority's officers and servants acting under its orders (*Greenwell v. Howell*, p. 4880, post), but not to their contractors (*Tilling, Ltd. v. Dick, Kerr & Co., Ltd.*, post, p. 4879). As to its applicability to independent officials and individuals performing a statutory duty, see *Salisbury v. Gould and Wilson v. Mackay*, p. 4880, post, and cf. *Doust v. Slater*, p. 4881, post. See also *Weir v. Thomas* (1914), 79 J. P. 54; 38 Digest 106, 758, where an action was brought against a medical officer of health and a sanitary inspector for alleged negligence in failing to inform the plaintiff that certain meat was unfit for human food and it was held that the officers in question were entitled to the protection of the Act. In a case where two assistant medical officers at a county council hospital were alleged to have performed an operation negligently, it was held that the protection of the Act applied, since the duty imposed on the county council was one which could only be performed by individuals and that consequently the officers were officers of a public authority performing the public duty imposed on that authority (*Nelson v. Cookson*, [1940] 1 K. B. 100; [1939] 4 All E. R. 30; 103 J. P. 363; Digest Supp.).

It has been held that a company incorporated by Act of Parliament not only for

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the performance of duties of public utility, but also for the purpose of earning profits, is not entitled to the benefit of the Act (*Att.-Gen. v. Margate Pier and Harbour Co.*, [1900] 1 Ch. 749; 64 J. P. 405; 38 Digest 102, 734). In a later case the Court of Appeal pointedly refrained from expressing an opinion whether the Act applied to profit-earning companies (*Jeremiah Ambler & Sons v. Bradford Corporation*, [1902] 2 Ch. 585; 66 J. P. 708; 38 Digest 102, 736); but in a still later case CHANNELL, J., referred to *Att.-Gen. v. Margate Pier and Harbour Co.*, *supra*, in terms which appear to show that the decision met with his approval (*Parker v. London C. C.*, [1904] 2 K. B. 501; 68 J. P. 239; 38 Digest 103, 739); and see also the remarks of VAUGHAN WILLIAMS, L.J., in *Lyles v. Southend-on-Sea Corporation*, p. 4880, *post*, and *English v. Metropolitan Water Board*, *infra*. In a Scotch case it was held that the Act does not protect commercial companies, and that when the liabilities and powers of such a company are transferred to a public authority, such authority cannot as to a liability to which they have succeeded rely upon the statute any more than their predecessors could have done (*Lanarkshire Upper Ward District Committee v. Airdrie, Coatbridge and District Water Trustees* (1906), 8 F. (Ct. of Sess.) 777; 38 Digest 105, b). See also on the latter point, *English v. Metropolitan Water Board*, [1907] 1 K. B. 588; 71 J. P. 313; 38 Digest 106, 756. In Ireland it has been held that the Act has no application in the case of trustees of a loan fund society sued for breach and neglect of their duties as such trustees (*O'Brien v. Mitchelstown Loan Fund*, [1903] 1 I. R. 282).

(c) "The Public Authorities Protection Act, 1893, is wanted only if the acts complained of are illegal. It may be an answer to the action that those acts were legal or gave no cause of action; but it is unnecessary to consider this, if though the acts were illegal, they are acts in respect of which an action can only lie if brought within the statutory limit of time. . . . To require the application of the . . . Act, the acts must be acts not authorised by any statute or legal justification, but acts intended to be done in pursuance or execution of some statute or legal power. It would appear, therefore, if illegal acts are really done from some motive other than an honest desire to execute the statutory or other legal duty and an honest belief that they are justified by statutory or other legal authority; if they are done from a desire to injure a person or to assist some person or cause, without any honest belief that they are covered by statutory authority or are necessary in the execution of statutory authority, the . . . Act is no defence, for the acts complained of are not done in intended execution of a statute but only in pretended execution thereof. In the same way as to 'defaults' which in my view cover simple omissions to do something which is required by statute to be done, if it can be proved that the default is the result of motives or intentions specified above, motives other than the desire and intention to perform statutory duty, the Act would not give protection. But a default in executing the statute from no positive motive or intention, but from simple forgetfulness or ignorance, would not lose the protection of the statute. . . . In my opinion, when a defendant appears to be acting as a member of a public body under statutory authority and pleads the Public Authorities Protection Act, the plaintiff can defeat that claim by proving on sufficient evidence that the defendant was not really intending to act in pursuance of the statutory authority, but was using his pretended authority for some improper motive, such as spite, or a purpose entirely outside statutory justification. When defendants are found purporting to execute a statute, the burden of proof, in my opinion, is on the plaintiffs to prove the existence of the dishonest motives above described and the absence of any honest desire to execute the statute, and such existence and absence should only be found on strong and cogent evidence." *Per SCRUTTON, L.J.*, in *Scammell and Nephew, Ltd. v. Hurley*, [1929] 1 K. B. 419, at p. 427; 93 J. P. 99; Digest Supp. In that case members of an electricity committee of a borough council who had cut off the supply of electric power during the general strike in order to preserve the supply of light, were held to be protected by the Act.

"Pursuance, execution or intended execution of Act."

The phrase "Act of Parliament" includes a private Act (*Bennett v. Stepney Borough Council*, p. 4880, *post*).

An action brought by a contractor, officer or servant against a local authority for breach of contract is not within this provision (*Davies v. Swansea Corporation* (1853), 8 Ex. 808; 17 J. P. 649; 38 Digest 108, 779; *Clarke v. Lewisham Borough Council* (1902), 67 J. P. 195; 19 T. L. R. 62; 38 Digest 109, 781). In *National Telephone*

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Co. v. Kingston-upon-Hull Corporation (1903), 89 L. T. 291 ; 52 W. R. 26 ; 38 Digest 109, 782, *BUCKLEY, J.*, held that the Act did not apply to a case which turned upon the construction of a contract and the effect of acts done under that contract ; and it has been held that it does not apply to an action brought by a contractor where the cause of action alleged is a fraud which induced him to make his contract with the authority (*Pearson v. Dublin Corporation*, [1907] A. C. 351 ; 38 Digest 101, 731). See also *Sharpington v. Fulham Guardians*, [1904] 2 Ch. 449 ; 68 J. P. 510 ; 38 Digest 109, 783 ; *Lyles v. Southend-on-Sea Corporation*, *post*, p. 4880 ; and *M'Phie v. Greenock Magistrates* (1904), 7 F. (Ct. of Sess.) 246 ; 38 Digest 108, 778 iii ; *Bradford Corporation v. Myers*, *post*, p. 4884 ; and *Hayes v. King's County C. C.*, [1917] 2 I. R. 496 ; 38 Digest 122, 901 i. An act done in relation to a contract may be tortious (see *Sachs v. Henderson*, [1902] 1 K. B. 612 ; 42 Digest 971, 26 ; *Du Pasquier v. Cadbury, Jones & Co., Limited*, [1903] 1 K. B. 104 ; 42 Digest 969, 13). The Act does not apply to actions for the price of goods sold and delivered, and for work and labour done (*Milford Docks Co. v. Milford Haven U. D. C.* (1901), 65 J. P. 483 ; 38 Digest 109, 780) ; nor to an action brought in respect of an act done by an independent contractor employed by a public authority in pursuance of his contract with them (*Kent C. C. v. Folkestone Corporation*, [1905] 1 K. B. 620 ; 69 J. P. 125 ; 38 Digest 105, 755). In such circumstances neither the public authority (*Kent C. C. v. Folkestone Corporation*, *supra*), nor the contractor (*Tilling (T.), Limited v. Dick, Kerr & Co., Limited*, [1905] 1 K. B. 562 ; 69 J. P. 172 ; 38 Digest 103, 737), can claim the benefit of the Act. It was also held that an action brought to set aside an adjustment agreement made between two local authorities upon the creation of a new urban district was not within the Act (*Holsworthy U. D. C. v. Holsworthy R. D. C.*, [1907] 2 Ch. 62 ; 71 J. P. 330 ; 38 Digest 121, 878). The council of a metropolitan borough in which the Public Libraries Act, 1892, *ante*, p. 4840, was in force, in the course of demolishing some old premises for the purpose of erecting a free library, made a hole in the wall of the adjoining owner's premises and did damage. In an action for damages brought by the adjoining owner subsequent to the expiration of six months after the act complained of, the council pleaded the statute, but it was held that it did not apply (*Walsh v. Southwark Borough Council* (1908), 72 J. P. 71 ; 38 Digest 108, 776).

A watch committee in dismissing a constable are acting in the intended performance of their duties under the M. C. Act, 1882, and are protected by the Statute (*Kiduff v. Wilson*, [1939] 1 All E. R. 429 ; 103 J. P. 59 ; Digest Supp.).

The P. H. A., 1875, s. 264 (now repealed), was held inapplicable to an action which was in substance merely an action of ejectment (*Foat (or Holder) v. Margate Corporation* (1883), 11 Q. B. D. 299 ; 47 J. P. 535 ; 38 Digest 121, 875), and it is doubtful if the present Act applies to such actions. See *Gross v. Rix* (1912), 77 J. P. 84 ; 29 T. L. R. 85 ; 38 Digest 121, 876, a claim for damage done in assertion of a proprietary right in land.

In *Grant (William) and Sons, Ltd. v. Dufftown Magistrates*, [1924] S. C. 952 ; [1924] S. L. T. 657 ; 38 Digest 131, *m*, the Scots courts held that an action to determine the question of competing water rights was not within the Act. In that case the defendants who were the water authority for the burgh did not rely upon any Act of Parliament or public duty as entitling them to impound the water objected to by the plaintiffs.

An action for an injunction to restrain a council from using land as a cemetery except beyond a radius of 100 yards from a dwelling-house (as required by s. 9 of the Burial Act, 1855 ; 2 Halsbury's Statutes 221) is an action against them for an act done in pursuance of a public duty within the meaning of the Act (*Toms v. Clacton U. D. C.* (1898), 62 J. P. 505 ; 78 L. T. 712 ; 38 Digest 107, 766). So also is an action to restrain a council from erecting a fire engine station on surplus land, part of which has been sold under restrictive conditions (*Holford v. Acton U. D. C.*, [1898] 2 Ch. 240 ; 40 Digest 310, 2656).

Where a sanitary authority serve a notice requiring abatement of a nuisance in connection with a supposed "drain," and in the course of works carried out in compliance with the notice it is discovered that the supposed drain is a "sewer," and that the authority was liable to do the repairs required by the notice, an action to recover from the authority the cost of the repairs as money paid to their use is an action for an act done in pursuance and execution, or intended execution, of an Act of Parliament or of a public duty or authority within the meaning of the text (*Gree v. St. Pancras Vestry*,

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[1899] 1 Q. B. 693 ; 38 Digest 107, 764 ; following *Waterhouse v. Keen*, and *Midland Rail. Co. v. Withington L. B.*, *post*, p. 4882). These cases were all discussed and followed in *Brocklebank v. R.*, [1925] 1 K. B. 52 ; 132 L. T. 166.

The words of the section were held wide enough to embrace an action for damages by a passenger who, while travelling on a tramcar belonging to a municipal corporation, was injured owing to the negligence of the corporation's servants, his cause of action, in the opinion of the court, not depending on contract, but arising out of a breach of the duty to carry him safely cast upon the corporation by the fact of his being a passenger whom by the terms of their Light Railway Order they could not refuse to carry (*Lyles v. Southend-on-Sea Corporation*, [1905] 2 K. B. 1 ; 69 J. P. 193 ; 38 Digest 102, 733).

An officer of a county council, to which the duties of a district council as to a public right of way within their district under s. 26 of the L. G. A., 1894, *post*, p. 4907, had been duly transferred under *ibid.*, sub-s. (4), drove along the way by direction of the county council in assertion of the public right to use it as a highway. The owner of the land having brought an action for trespass against the officer, judgment was for the defendant. *Held*, that the action was commenced for an act done in pursuance or execution of an Act of Parliament within the meaning of the text (*Greenwell v. Howell*, [1900] 1 Q. B. 535 ; 38 Digest 105, 751). Where a district council abated an encroachment upon a main road vested in the county council, and successfully defended an action brought against them for so doing, it was held that they were entitled under the Act to costs as between solicitor and client (*Harvey v. Truro R. D. C.*, [1903] 2 Ch. 638 ; 68 J. P. 51 ; 38 Digest 107, 773).

Although not actually deciding the point, GRANTHAM, J., expressed the opinion that a medical practitioner in private practice, who negligently diagnoses a non-infectious illness and notifies it as an infectious one, thereby causing damage to the patient, would be within the protection of the Act (*Salisbury v. Gould* (1904), 68 J. P. 158 ; 38 Digest 104, 744). There would appear to be no doubt so far as regards medical practitioners employed by a local authority and acting as such at the time (see *Nelson v. Cookson*, *ante*, p. 4877).

An action was brought against the commanding officer of a Volunteer corps in respect of a street accident alleged to be due to his negligence in selecting horses and drivers for an ammunition waggon. It was held that as the cause of action alleged was his neglect of duty in his public capacity of commanding officer training his corps, the action was within the Act (*Wilson v. Mackay* (1904), 7 F. 168).

The Act was held to apply to an action for libel by a schoolmaster against a school board in whose employment he had been, in respect of statements contained in a resolution of the board stating the reasons for the master's dismissal (*Reid v. Blisland School Board* (1901), 17 T. L. R. 626 ; 38 Digest 107, 771) ; also to an action for malicious prosecution (*Bostock v. Ramsey U. D. C.*, *post*, p. 4889). A public official acting in the exercise of a statutory or other authority is not protected by the Act if he acts maliciously, but malice cannot be presumed from the fact that he is mistaken as to his authority if he bona fide believes that he is acting under the powers conferred upon him. So held in an action by an Inspector of Schools against a Resident Commissioner in Ireland alleging malice and abuse of authority (*Newell v. Starkie*, [1919] 2 Ir. R. 325 ; 83 J. P. 113 ; 38 Digest 119, 854).

A servant of a council who for some years had paid contributions to a superannuation fund under a private Act was dismissed, and brought an action for the recovery of his contributions which he alleged to be due to him on his dismissal. It was held that as the action was brought more than six months (the then period of limitation) after the alleged default of the defendants, s. 1 of this Act applied, and the action was not maintainable (*Bennett v. Stepney Borough Council* (1912), 76 J. P. 473 ; 107 L. T. 383 ; 38 Digest 101, 730). See also *McManus v. Boves*, [1938] 1 K. B. 98 ; [1937] 3 All E. R. 227 ; 101 J. P. 455 ; Digest Supp. In a further case where an officer of a council sued for arrears of salary which the council had reduced during a long period of illness, it was held on the facts that he was entitled to recover but that his claim was barred in respect of salary accruing due more than six months before the issue of the writ since the council were entitled to the protection of this Act (*Compton v. West Ham Borough Council*, [1939] Ch. 771 ; [1939] 3 All E. R. 193 ; 103 J. P. 271 ; Digest Supp.). So too where an officer brought an action to recover his fees as registration officer (*Mountain v. Bermondsey Borough Council*, [1942] 1 K. B. 204 ; [1941] 3 All E. R. 498 ; 106 J. P. 71).

A shipowner brought an unsuccessful action against the Tyne Improvement Commissioners in respect of damage done by a fire on one of their staiths. He failed, and, in opposition to an application for solicitor and client costs, contended that the defendants were not sued in respect of an act done in the intended execution of a public duty, as the negligence and breach of duty alleged against them was in respect of unauthorised works. It was held that the defendants erected and worked the staith in "intended execution" of statutory powers; and, if in constructing it they had deviated a little from such powers, adjoining owners were the only people entitled to complain, and the plaintiff could not rely on that fact (*The Johannesburg*, [1907] P. 65; 38 Digest 103, 738).

The following cases, mostly as to the necessity for "notice before action," were decided under earlier Acts upon such expressions as "anything done or intended to be done or omitted to be done under the provisions of this Act," or the like.

A defendant contracted with a local board for the digging of wells, the work to be done to the satisfaction of the board or their surveyor, and the digging to be done under the direction of the surveyor. A hole made in digging one of the wells in a highway was left without sufficient light, and the plaintiff's horse fell into it. For the damage thereby occasioned, the plaintiff brought an action without notice. *Held*, that the defendant was a person acting under the direction of the local board within the meaning of s. 139 of the P. H. A., 1848, and that the action was in respect of something "done or intended to be done under the provisions of" the Act (*Newton v. Ellis* (1855), 5 El. & Bl. 115; 19 J. P. 805; 38 Digest 104, 745).

The plaintiff and defendant were occupiers of adjoining houses separated by a covered passage. The house of the defendant was a publichouse, and the public were accustomed to commit nuisances against the wall of the plaintiff's house. The district board thereupon directed their inspector of nuisances to cause a urinal to be put up against the plaintiff's wall, and the inspector gave authority to the defendant to erect it, which he accordingly did, the district board paying a portion of the expense. It was held that the defendant, having acted as the inspector's delegate, in a matter intended to be done under the provisions of the Act, was entitled to notice of action under the Metropolis Management Amendment Act, 1862, s. 106 (*Chambers v. Reid* (1866), 30 J. P. 231; 13 L. T. 703; 38 Digest 105, 753). But where under the same Act a district board required a person to drain into a sewer, and in doing so he committed a trespass, it was held that he was acting, not under the orders or directions of the board, or by their authority, but simply in performance of a duty imposed upon him by statute, which, if he omitted, the board were empowered to call upon him to perform (*Doust v. Slater* (1869), 10 B. & S. 400; 33 J. P. 581; 38 Digest 105, 754). But, *semble*, the present Act might apply to a person so acting.

A contractor, employed by the Metropolitan Board of Works to enlarge a sewer, erected in it a dam, the water above which was removed by pumping. Owing to his negligence in not working the pumps, the sewage flowed back into the plaintiff's premises and injured them. *Held*, that the injury was occasioned by acts "done or intended to be done" under the powers of the board under the Metropolis Management Amendment Act, 1862, within the meaning of s. 106 thereof (*Poulsom v. Thirst* (1867), L. R. 2 C. P. 449; 38 Digest 104, 747). A contractor under a district board was engaged in constructing a sewer, and employed men with horses and carts. The men were allowed an hour for dinner, but were not permitted to go home, or to leave their horses and carts. One of them went home, about a quarter of a mile out of the direct line of his work, to his dinner, and left his horse unattended in the street before his door. The horse ran away, and damaged certain railings belonging to the plaintiff. The jury found that the driver was acting within the scope of his employment. It was held that the thing complained of was not a thing "done or intended to be done under" the powers of the board under the Act of 1862 (11 Halsbury's Statutes 965) (*Whitman v. Pearson* (1868), L. R. 3 C. P. 422; 38 Digest 104, 748).

The plaintiff was a driver employed by contractors, who had contracted with the defendants to provide horses and drivers for their carts used in watering the streets under the powers of the Metropolis Management Acts. The defendants negligently supplied a cart with a defective axle, by reason whereof the plaintiff, while watering the streets, was thrown off and injured. It was held that the supply of the water-cart to the plaintiff for the purpose of watering the streets was a thing "done or intended to be done" under the Acts (*Edwards v. St. Mary, Islington (Vestry of)* (1889), 22 Q. B. D. 338; 53 J. P. 180; 38 Digest 107, 765).

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The defendants, a local board, left unfenced a goit adjoining a public footpath within their district, by reason whereof the plaintiff's husband, while using the footpath, fell into the goit and was drowned. It was held that the alleged cause of action being the continued non-performance of a duty imposed upon them by the P. H. A., 1848, and therefore a thing "done or intended to be done under" the provisions of the Act, the defendants were entitled to notice of action (*Wilson v. Halifax (Mayor, etc. of)*, ante, p. 4352). Per KELLY, C.B.: "It is now settled by authority that an omission to do something that ought to be done in order to the complete performance of a duty imposed upon a public body under an Act of Parliament, or the continuing to leave any such duty unperformed, amounts to an act done or intended to be done within the meaning of those clauses requiring notice of action for the protection of public bodies acting in the discharge of public duties under Acts of Parliament."

The defendants, surveyors of highways, received payment from the plaintiff of an assessment upon a highway rate which had been improperly or irregularly made. They had intended to act in the performance of the duties of their office. In an action to recover back the money, it was held that the acts complained of were done "in pursuance of" the Highway Act, 1835 (9 Halsbury's Statutes 50). Per LUSH, J.: "The question was whether the defendants in making the rate intended to do what they were authorised to do. It is clear that they bona fide believed they were doing what the law allowed, and that is all that is needed to entitle them to the protection of the statute." Per BLACKBURN, J.: "It has long been decided that such a provision is intended to protect persons from the consequences of committing illegal acts which are intended to be done under the authority of an Act of Parliament, but which by some mistake are not justified by its terms, and cannot be defended by its provisions" (*Selmes v. Judge* (1871), L. R. 6 Q. B. 724; *sub nom. Judge v. Selmes*, 35 J. P. 645; 38 Digest 117, 839).

Where a local board having authority to moor a landing-stage in a navigable river, fastened it with an anchor, but omitted to bury the same properly, by reason of which omission a vessel in navigating the river suffered damage, it was held that their omission amounted to an "act done or intended to be done" under the provisions of the statute in question (*Jolliffe v. Wallacey L. B.* (1873), L. R. 9 C. P. 62; 38 J. P. 40; 38 Digest 112, 800).

To an action for slander the defendant pleaded that the words were spoken while he was acting as clerk of the markets, in pursuance of the Acts relating to municipal corporations in Ireland, which entitled him to a month's notice of action for any act done "in pursuance of" them. The plea was held good, for the words spoken while acting in pursuance of the statutes were as much within their protection as acts done (*Murray v. McSwinnney* (1876), Ir. Rep. 9 C. L. 545); see, however, *Royal Aquarium, etc. Society v. Parkinson*, [1892] 1 Q. B. 431; 56 J. P. 404; 38 Digest 78, 553.

The omission to repair the handrail of a bridge over a brook was held to be something done in pursuance of, or under the authority of, the Highway Act, 1835, so as to require notice (under s. 109) of an action for an injury sustained by reason of such omission (*Holland v. Northwich Highway Board* (1876), 40 J. P. 517; 34 L. T. 137; 38 Digest 112, 801).

The defendant authority gave to the plaintiffs notice to pave a street under the P. H. A., 1875, s. 150, ante, p. 4388, and on default themselves executed the work, and the plaintiffs on demand paid the amount apportioned on them. Both parties then believed that the street was not a highway repairable by the inhabitants, but some time afterwards it was discovered that it was such a highway, and the plaintiffs sued to recover back the amount. It was held that the claim was for something "done, or omitted to be done," under the Act (*Midland Rail. Co. v. Withington L. B.* (1883), 11 Q. B. D. 788; 47 J. P. 789; 38 Digest 123, 905; following *Waterhouse v. Keen* (1825), 4 B. & C. 200; 38 Digest 123, 908, and *Selmes v. Judge*, supra).

A local board constructed a pier under powers given by Provisional Order and confirming Act. The Order vested the pier in the board, and provided that expenses incidental to it should be discharged out of the general district rate. The plaintiffs were admitted to the pier as passengers of a steamboat company, who paid a rent to the board for the right to land passengers. While so using the pier the plaintiffs were injured by the negligence of the board or their servants. It was held that an action for such negligence was not an action for anything "done or intended to be done or omitted to be done" under the P. H. A., 1875, ante, p. 4331 (*Ongley v. Chatham L. B.* (1887), 3 T. L. R. 706; affirmed 4 T. L. R. 6; 38 Digest 110, 787).

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An action was brought to recover penalties under the local Acts authorising the construction of the Swansea Waterworks. By these Acts the defendants were bound to keep up a flow of minimum quantities of water into certain streams for the benefit of persons interested, including the plaintiff. In case of failure otherwise than through inevitable accident the defendants were liable to pay daily penalties and compensation. It was held that the claim was for things "done or intended to be done or omitted to be done" under the Acts (*Lewis & Sons v. Swansea (Corporation of)*, W. N. (1887), p. 234).

(d) The institution of a prosecution is not a "public duty" because it cannot be legally enforced and the limitation of time imposed by the Act does not, therefore, apply to an action for malicious prosecution against a public authority (*Hartin v. London C. C.* (1929), 93 J. P. 160; 45 T. L. R. 318; Digest Supp.).

The words "public authority" include a Provisional Order for an electric lighting undertaking duly confirmed by statute: see *Chamberlain and Hookham v. Bradford Corporation* (1900), 64 J. P. 806; 83 L. T. 518; 38 Digest 107, 770; *Ambler v. Bradford Corporation*, ante, p. 4878.

The principle appears to be that a public authority act "in execution or intended execution of a public duty or authority" when they exercise the functions which are imposed upon them by statute and which they were incorporated by statute to perform even though the actual exercise may be, in form, voluntary. They do not so act if they voluntarily exercise a power which they have themselves sought and which was not imposed upon them. Thus in a case where a corporation were empowered by Provisional Order to erect an entertainment pavilion on a pier, and did so, and a person was later injured by a poster frame falling on her therein, the Act was held not to apply since the Order merely enabled the corporation to build the pavilion and did not compel them to build it or, having built it, to carry it on (*Hawkes v. Torquay Corporation*, [1938] 4 All E. R. 16; Digest Supp.). But when a council was empowered, but not obliged, under the P. H. (London) Act, 1936, s. 167 (30 Halsbury's Statutes 537), to provide public swimming baths, and did so, and personal injuries resulted from alleged negligence in the management therein but negligence in fact was not established, it was held that solicitor and client costs followed since the council were acting in pursuance of a public duty or authority and were entitled to the protection of this Act (*Glarke v. Bethnal Green Borough Council*, [1939] 2 All E. R. 54; 103 J. P. 160; Digest Supp.).

A borough council who were the water authority for their district were owners of a motor car, and they employed a chauffeur to drive it. The car was used for general purposes, but especially for the purpose of taking about the borough officials. On a certain day the car, containing, besides the chauffeur, the water engineer of the council, and a clerk from the treasurer's department, was taken out to visit three of the council's pumping stations, in order that the engineer might examine them and that the clerk might pay the wages of the persons employed there. After these officials had performed their duties, and while the car was returning to the garage, the engineer having left it but the clerk being still in it, it collided with and injured the plaintiff through the alleged negligence of the chauffeur. More than six months after the accident (the then period of limitation) the plaintiff brought his action. Held, that the action was not brought in respect of any alleged neglect or default in the execution of any Act of Parliament or of any public duty or authority within the meaning of that Act, and that the action lay notwithstanding that it had not been brought within six months after the accident (*Clarke v. St. Helens Borough Council* (1915), 79 J. P. 529; 85 L. J. K. B. 17; 38 Digest 111, 794).

The defendants were a water board having certain statutory duties and powers in relation to the supply of water in London and certain adjoining districts. They used motor lorries to convey piping and other stores to the depots established by them in their district. On September 17, 1919, they despatched from Battersea to their depot at Lea Bridge a lorry laden with water pipes and other stores for repairs and maintenance. Having arrived at Lea Bridge and discharged the water pipes there, certain empties were put on the lorry and, so loaded, the lorry returned to the place from which it started. During that return journey, loaded with empties, the lorry ran into and knocked down and seriously injured the plaintiff, who claimed damages from the defendants, but did not commence his action within six months (see *supra*) of the accident. It was held that the use of the lorry at the time of the accident was "in pursuance or execution or intended execution of" the statutory duty and authority

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of the defendants, and that, therefore, they were protected (*Edwards v. Metropolitan Water Board*, [1922] 1 K. B. 291; 86 J. P. 33; 38 Digest 111, 795). For two cases in which the managers of non-provided schools were held entitled to the protection of the Act, see *Greenwood v. Atherton*, [1939] 1 K. B. 388; [1938] 4 All E. R. 686; 103 J. P. 41; Digest Supp., and *Griffiths v. Smith*, [1941] A. C. 170; [1941] 1 All E. R. 66; 105 J. P. 63.

A municipal corporation who were also gas authority were empowered by their Act to sell the coke produced in the manufacture of gas. They contracted to sell and deliver a ton of coke to the plaintiff, and by the negligence of their agent the coke was shot through the plaintiff's shop window. More than six months (see *supra*) after the plaintiff commenced the action, and the Act was pleaded in defence. It was held that the act complained of was not an act done in the direct execution of a statute, or in the discharge of a public duty or the exercise of a public authority, and that the Act was not a defence to the action (*Bradford Corporation v. Myers*, [1916] A. C. 242; 80 J. P. 121; 38 Digest 110, 784). This decision was applied and followed in *Hayes v. King's County C.C.*, [1917] 2 I. R. 496; 38 Digest 122, 901 i. But the Act was held applicable in an action against an insurance committee constituted under the National Health Insurance Act to set aside their decision with reference to a deduction for extravagant prescribing by a medical practitioner (*Mitchell v. Aberdeen Insurance Committee*, [1918] S. C. 415; 38 Digest 115, 825 vi). And it was held that the Act applies to servants of the Crown acting within the scope of their public duties (*The Danube II.*, [1920] P. 104), but not to a railway company in respect of non-feasance where they should have repaired a road (*Swain v. Southern Rail Co.*, [1939] 2 K. B. 560; [1939] 2 All E. R. 794; Digest Supp.).

A man who had been injured by being run over by an ambulance waggon belonging to an ambulance association, brought an action against the association more than six months after the accident. The association averred that they were incorporated by Royal Charter to do benevolent work, and that in running the waggon they were acting in execution of the public duty or authority entrusted to them by virtue of the charter. It was held that the association were not charged with any public duty or authority, and were not entitled to the protection of the Act (*Ayr v. St. Andrews Ambulance Association*, [1918] S. C. 158; 38 Digest 125, p). In another case of injury done by an ambulance the defendants were held entitled to the protection of s. 166 of the Public Health (Scotland) Act, 1897 (*Baker v. Glasgow Corporation*, [1916] S. C. 199; 38 Digest 125, o).

The plaintiff was injured by an escape of gas due to the negligence of the defendant's servant when fixing a meter, stoves and fittings, and connecting the pipes in a house where the plaintiff was employed. It was held that having regard to the Gasworks Clauses Act, 1871, *ante*, p. 4307, the defendant's servant was acting in the execution or intended execution of an Act of Parliament, and that the defendants were entitled to the protection of the statute (*Clayton v. Pontypridd U. D. C.*, [1918] 1 K. B. 219; 82 J. P. 246; 38 Digest 108, 777).

Handing over cloth apparently stolen to the apparent owners on the part of the Receiver of Metropolitan Police is acting in intended execution of a public duty, and the Act applies (*Betts v. Metropolitan Police District Receiver and Carter Paterson & Co., Ltd.*, [1932] 2 K. B. 595; 96 J. P. 327; Digest Supp.).

(*dd*) But the statute must be pleaded if it is to be relied upon (R. S. C., Order XIX., r. 16; C. C. R., Order X., r. 14); see *Gregory v. Torquay Corporation*, [1912] 1 K. B. 442; 76 J. P. 73; 13 Digest 496, 460, as to what is a sufficient description of it in a county court pleading. If defendant ask at a late stage of an action for leave to amend by pleading the statute, leave may be refused altogether (*Aronson v. Liverpool Corporation* (1913), 77 J. P. 176; 32 Digest 545, 1984); and even if it be granted, the defendants, though succeeding on the plea, may have to bear the costs (*Att.-Gen. v. West Ham Corporation*, [1910] 2 Ch. 560; 74 J. P. 406; 38 Digest 121, 873). See *Cross v. Rix*, p. 4877, *ante*, for a case where a nonsuit on the plaintiff's opening was held not to be justified.

It would seem, too, that defendants may so conduct negotiations after a claim is made upon them as to debar them from relying upon the limitation provisions of the Act; see *Paterson v. Glasgow Corporation* (1908), 46 Sc. L. R. 10, where the court having regard to mistakes made and letters written by officials of the corporation, held that it would be inequitable to allow them to rely on a very similar provision. See upon this point, *Hewlett v. London C. C.* (1908), 72 J. P. 136; 24 T. L. R. 331;

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38 Digest 136, 997; there the plaintiff, being injured, owing to the negligent driving of the defendants' servant, claimed compensation from the defendants, and negotiations were entered into with a view to settling her claim. More than six months (the then period of limitation) after the alleged act of negligence, the negotiations having broken down, the plaintiff commenced an action and the defendants pleaded the statute. The jury found that the defendants had by their conduct induced the plaintiff to delay commencing an action. It was held that the defendants were not debarred from setting up the statute in defence. See also *Fraser v. British South Africa Co.* (1911), Times, October 25th, Nov. 24th, where it was held that the terms of an alleged agreement would not debar the company from relying on a Statute of Limitations.

In *Midland Rail. Co. v. Withington L. B.*, ante, p. 4882, the money was paid on October 30th, 1880, so that the six months (see *supra*) would expire on April 30th, 1881. On April 13th the plaintiffs' secretary wrote to the defendants for information as to the result of certain proceedings which were to determine whether the road was a highway or not, and stating that if the board were defeated the plaintiffs would expect a return of the money. The defendants replied that they were going to appeal, and would inform the plaintiffs of the result. The action was brought in March, 1882, after a month's notice had been given. It was held that the facts did not disclose a waiver by the defendants of the benefit of the section.

(e) The paragraph as enacted was repealed as from 1st July, 1940, by the Limitation Act, 1939, s. 34 (4), Schedule, Vol. V. and 32 Halsbury's Statutes 244, 245. of time. By s. 21 of the same Act it is provided as follows:—Limitation of actions against public authorities.—(1) No action shall be brought against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of the action accrued: Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued, for the purposes of this subsection, until the act, neglect or default has ceased. (2) The foregoing provisions of this section shall not apply to any action to which the Public Authorities Protection Act, 1893, does not apply, or to any criminal proceedings.

The slight differences in wording between the former and the substituted provisions do not appear substantially to affect the interpretation of the Act, and it is to be observed that the same phrases "any person," "pursuance, execution or intended execution of any Act of Parliament" and "public duty or authority" (see notes, *supra*) are repeated with apparently exactly the same significations as in the original enactment. There are two amendments in that (1) the period of one year is substituted for six months, and (2) the period of limitation is to run from the date on which the cause of action accrued, but this still means from the act or the cesser of a continuing act. The accumulated case law need, therefore, be read with only the first of these two modifications in mind.

It is the duty of a solicitor, instructed to negotiate with a public authority in respect of a claim for negligence, and failing satisfactory negotiations, to bring an action, to be acquainted with this enactment, and when the public authority has made an offer, to intimate to his clients that they must make up their minds to act before the expiration of the year. For breach of this duty the solicitor must compensate his clients for the loss sustained by them by reason thereof (*Fletcher & Son v. Jubb, Booth and Hellivell*, [1920] 1 K. B. 275; 42 Digest 97, 894). As to the computation of the six months (now one year), see *Freeman v. Read* (1863), 4 B. & S. 174; 32 L. J. M. C. 226; 38 Digest 457, 225; *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161; 56 J. P. 262; 14 Digest 153, 1280; *Goldsmiths' Co. v. West Metropolitan Rail. Co.*, [1904] 1 K. B. 1; 68 J. P. 41. According to a decision of the Court of Session in Scotland, when the six months expired on a Sunday, the writ was too late if issued on the following Monday (*McNiven v. Glasgow Corporation*, [1920] S. C. 584; 38 Digest 125, r). And see also *Gelmini v. Moriggia*, [1913] 2 K. B. 549; 32 Digest 330, 163, where, in principle, the same conclusion was arrived at.

Under the old provision, where the cause of action was the doing of the act itself, the time ran from the act; where it was the resulting damage, it ran from the date when the damage resulted, and where the injurious act was continuing and caused

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continuous damage, the right of action also continued. See *Whitehouse v. Fellowes* (1861), 10 C. B. (N.S.) 765; 26 J. P. 40; 38 Digest 127, 932; *Backhouse v. Bonomi* (1861), 9 H. L. Cas. 503; 34 L. J. Q. B. 181; 32 Digest 340, 237; *Darley Main Colliery Co. v. Mitchell*, ante, p. 4669, and *West Leigh Colliery Co., Limited v. Tunnicliffe*, ante, p. 4669; *McClelland v. Manchester Corporation*, [1912] 1 K. B. 118; 76 J. P. 21; 38 Digest 129, 948. Where, by an Improvement Act, actions for any injury done by the commissioners under the Act were to be brought within six months after the thing done, and the defendants, proceeding under the Act to dig a sewer, cracked the walls of the plaintiff's house, it was held that the plaintiff's right of action was limited to six months after the day on which the crack was occasioned, and did not continue for so long a time as the crack continued (*Lloyd v. Wigney* (1830), 6 Bing. 489; 38 Digest 129, 951).

Where an excavation made by a local authority under a street for the purpose of laying a sewer was not properly filled in, and in consequence a subsidence of the plaintiff's land with injury to houses thereon took place, which began at a period more than six months before, and went on continuously down to, the commencement of an action by the plaintiff in respect of such subsidence, it was held, on the authority of *Darley Main Colliery Co. v. Mitchell*, ante, p. 4669, that the further subsidence, which took place within the six months before action, constituted a distinct cause of action in respect of which the action was maintainable, notwithstanding the provisions of s. 264 of the P. H. A., 1875 (*Crumbie v. Wallsend L. B.*, [1891] 1 Q. B. 503; 55 J. P. 421; 38 Digest 126, 925). And see, to the same effect, *Fairbrother v. Bury R. S. A.* (1889), 37 W. R. 544; 38 Digest 130, 952.

A plaintiff was injured on June 17th, 1901, in consequence of an alleged act of misfeasance done by the defendant's servants some few days previously, and, whilst still suffering from her injuries, brought her action on October 8th, 1902; it was held that the action was not maintainable, on the ground that the words "continuance of injury or damage" refer only to those cases where there is a continuing cause of action (*Carey v. Bernondsey Borough Council* (1903), 67 J. P. 111). This case was followed in *Freeborn v. Leeming*, [1926] 1 K. B. 160; 90 J. P. 53; 38 Digest 130, 955, where an action was brought for damages for negligent failure to diagnose injuries whereby permanent injury was caused. The action was not commenced till more than six months after the plaintiff had ceased to be under the defendant's care. The Act was held to apply since the time ran from the negligent act complained of. It would appear that both these cases would continue to apply under the new wording of the Act of 1939, since in the first case the cause of action "accrued" on June 17th, 1901, and, in the second, on the date of the examination; and it was not the "act, neglect or default," but only the injuries, which continued thereafter. In *Ravilins v. Gillingham Corporation* (1932), 96 J. P. 153; 146 L. T. 486; Digest Supp., it was held that the Act of 1893 applied in a case where an action was started on July 4th in respect of injuries alleged to have been sustained by negligence on January 3rd with no suggestion of damage through any subsequent act. See also *Copley v. Leeds Corporation* (1904), 68 J. P. N. 196. It has been held in Scotland also that a mere continuance of the injurious effects or damage caused by an accident is not a "continuance of injury or damage" (*Spittal v. Glasgow Corporation* (1904), 6 F. (Ct. of Sess.) 828; 38 Digest 129, t). In *Harrington (Earl of) v. Derby Corporation*, [1905] 1 Ch. 205; 69 J. P. 62; 38 Digest 127, 934, where damages were claimed for pollution of a river, BUCKLEY, J., said: "The defendants contend that, having regard to s. 1 of the Public Authorities Protection Act, 1893, the plaintiffs can recover damages for no longer period than six months before the issue of the writ. To determine this point it is necessary to ascertain the meaning of the words in the section, 'in case of a continuance of injury or damage.' It cannot be disputed that, for one cause of action all damages incident to it must be recovered once and once only, so that, for instance, if by the removal of the soil the defendant causes the walls of the plaintiff's house to crack, the plaintiff's cause of action is one and one only, and that none the less because the house does not at once show all the damage done to it, but manifests subsequently by degrees that the damage had been done. Upon this *Lloyd v. Wigney* (supra) was cited, being a case upon the words of an Act which provided that an action must be brought within six calendar months 'after the thing done.' But if the result of the act is that one damage is done to-day and another subsequently, there is nothing to prevent a fresh action *toties quoties* fresh damage is inflicted (*Darley Main Colliery Co. v. Mitchell* (1886), 11 App. Cas. 127; 51 J. P. 148; 32 Digest 341,

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238). If as the result of an act done to-day damage results a year later, the cause of action arises, not at the date of the act, but a year later when damage results. No cause of action arises from the act if it at that date created no damage. The right of action arises, not from the act, but from the resulting of damage from the act. *Backhouse v. Bonomi* (1861), 9 H. L. Cas. 503; 32 Digest 340, 237, established that proposition. There is, however, a further case with which this action is particularly concerned, viz., a continuing act which produces subsequently from day to day a recurrent damage. There is thus created within the principle which I have stated a fresh cause of action every day, and this, I conceive, is what is referred to in the section by the words 'in case of a continuance of injury or damage.' The words do not mean or refer to a damage inflicted once and for all which continues unrepaired, but a new damage recurring day by day in respect of an act done, it may be, for once and for all at some prior time, or repeated, it may be, from day to day. In such a case there is what CHANNELL, J., in *Carey v. Bermondsey Metropolitan Borough Council* (1903), 67 J. P. 111, 447; 38 Digest 130, 953, calls a continuing cause of action. Where this is the case I think that, within s. 1 of the Public Authorities Protection Act, 1893, an action will lie when instituted six months next after the ceasing of the continuing injury or damage. That is, I think, the present case. These plaintiffs are therefore, I think, entitled to recover for a greater period than six months, and up to the period of six years limited by the Statute of Limitations."

In a later case where the defendants had, when pumping at a pumping station, polluted a stream by repeatedly pouring into it engine oil and grease during a period of three or four years prior to the date of the action, Lord ALVERSTONE, C.J., held that the plaintiffs could not recover damages for pollution caused more than six months before action brought (*English v. Metropolitan Water Board*, ante, p. 362). The same principle would seem to apply under s. 21 of the Act of 1939, ante, p. 4885, if the pollution had wholly ceased more than a year before action brought.

The decision in *Harrington (Earl of) v. Derby Corporation*, supra, was followed in *Hague v. Doncaster R. D. C.* (1908), 73 J. P. 69; 100 L. T. 121; 38 Digest 128, 942 (animals poisoned by pollution of a river); and in *Att.-Gen. v. Lewes Corporation*, [1911] 2 Ch. 495; 76 J. P. 1; 38 Digest 130, 959, a periodical influx of sewage from a sewer remaining unrepaired was held to be a continuing cause of action. Where, however, damage was caused by the regurgitation of a surcharged sewer in consequence of a heavy rainfall more than six months before action brought, it was held in Scotland that the Act applied notwithstanding that the sewer up to the date of the action remained insufficient in breach of the authority's statutory duty (*Brownlie and Son v. Barrhead Magistrates*, [1925] S. C. (H. L.) 41; [1925] S. L. T. 373). See also *Hart v. St. Marylebone Borough Council* (1912), 76 J. P. 257; 10 L. G. R. 502; 38 Digest 128, 945, as to a failure to repair a sewer and so support a road repairable by the plaintiffs being a "continuous wrong." For a case where the nuisance complained of had admittedly ceased more than six months before action, and the statute was held applicable, see *Barnett v. Woolwich Borough Council* (1910), 74 J. P. 441; 38 Digest 128, 943. "The net result of the authorities appears to be that in order to come within the words of the section (as to continuance of damage) there must be a continuing breach of duty together with a continuing damage," per McCARDIE, J., in *R. v. Marshland, Smeeth and Fen District Commissioners*, [1920] 1 K. B., at p. 173; 38 Digest 121, 886. For a case where the court held that there was a continuing injury and damage consisting of a continuing breach of duty together with a continuing damage, see *Boynston v. Ancholme Drainage Commissioners*, [1921] 2 K. B. 213; 85 J. P. 33; 38 Digest 37, 221. Where a local authority as waterworks undertaker after laying a main failed to fill in the trench properly and so deprived the plaintiffs' gaspipes of support whereby a series of fractures were caused, it was held that there was a continuing duty upon the authority under s. 32 of the Waterworks Clauses Act, 1847, ante, p. 4185, to remedy the neglect in the improper filling in of the ground and that time did not begin to run under this Act so long as that duty was undischarged, and that the defendants were entitled to recover in respect of the fractures which had occurred more than six months before action brought (*Huyton and Roby Gas Co. v. Liverpool Corporation*, [1926] 1 K. B. 146; 90 J. P. 45; 38 Digest 129, 949). Where, however, a dock company under statutory powers raised and repaired a wreck in their dock in February, 1930, but, having formed the opinion that the repairs were useless, sold the ship to breakers

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and issued a statutory statement, it was held that the act or default complained of was in substance the alleged negligence of the dock company in repairing the ship and that the six months' period ran from that date, and a contention by the cargo owners that it ran from the preparation of the adjustment statement, on the ground that their rights were not ascertainable until its preparation, was rejected (*Copper Export Association Incorporated v. Mersey Docks and Harbour Board* (1932), 147 L. T. 320; 48 T. L. R. 542; Digest Supp.).

In *Cree v. St. Pancras Vestry*, ante, p. 4879, it was held that the former limitation period of six months ran from the date of the expenditure of the money, because although it was not paid into the authority's own hands and kept by them as in *Midland Rail. Co. v. Withington L. B.*, ante, p. 4882, yet it was paid in consequence of their request made in pursuance of the Act.

A man was convicted on February 11th for neglecting to have his children vaccinated, and, the fines not being paid, the magistrate issued a distress warrant under which the plaintiff's goods were distrained on April 17th. After quashing the conviction, the plaintiff, on August 26th, brought an action for damages for illegal distress; it was held that the trespass to his goods by the distress was "the act complained of" and not the conviction, and that, therefore, the action was brought in time (*Polley v. Fordham* (No. 1), [1904] 2 K. B. 345; 68 J. P. 321; 38 Digest 127, 930). In *Turley v. Daw* (1906), 94 L. T. 216; 22 T. L. R. 231; 38 Digest 127, 931, however, it was held in action against the high bailiff of a county court by a plaintiff who had been arrested under a committal order founded on a judgment summons never served upon him, that the six months ran not from the date of arrest but from the date when the bailiff wrongly informed the court that he had duly served the summons. In *Morriss v. Winter*, [1930] 1 K. B. 243; Digest Supp., a prison governor forfeited certain marks as a result of which a prisoner lost a certain remission of his sentence and the forfeiture was continued by the governor of another prison to which the prisoner was later transferred. It was held that both governors were within the protection of the Act, and that the period of limitation ran from the original forfeiture as that was the act which caused the damage and there was no continuance.

A plaintiff alleged that a highway authority had pulled down a fence erected by him round a roadside waste, and claimed such waste. He asked for a declaration and an injunction against trespassing. It was held that the action was barred at the expiration of six months from the pulling down of the fence (*Offin v. Rockford R. D. C.*, [1906] 1 Ch. 342; 70 J. P. 97; 38 Digest 107, 774).

In an action for compensation awarded in respect of damage occasioned by the exercise of the powers of the Metropolis Management Acts, it was held to be no defence that the action was commenced more than six months after the damage was sustained, as s. 106 of the Metropolis Management Amendment Act, 1862, did not apply to such a claim, and still less to an action on an award made upon such claim (*Delany v. Metropolitan Board of Works* (1867), L. R. 3 C. P. 111; 31 J. P. 788; 11 Digest 295, 2249; followed by DAY, J., in *Moreton v. Alfreton* (unreported), May 6th, 1898). See also cases as to compensation claims in note (b), p. 4876, ante. In the case of an action upon an award of compensation for injurious affection of land, the time under the general Statutes of Limitation runs from the date of the award, not from the date of the execution of the works complained of (*Turner v. Midland Rail. Co.*, [1911] 1 K. B. 832; 75 J. P. 283; 32 Digest 327, 133).

A plaintiff, whose houses were about to be closed as insanitary without compensation, complained that four years before the defendants had failed to pull down such houses when condemned by a jury and to compensate her in respect thereof, as required by a local Act; it was held that under the circumstances there was no continuing injury, for she had at the time elected to accept the *status quo* and not compel them to proceed (*Merrick v. Liverpool Corporation*, [1910] 2 Ch. 449; 74 J. P. 445; 38 Digest 218, 522).

A Divisional Court held that the six months' limit under the provision in the text superseded the twelve months provided for in the Fatal Accidents Act, 1846 ("Lord Campbell's Act") (12 Halsbury's Statutes 335), and applied to actions brought under that Act (*Markey v. Tolworth Joint Isolation Hospital District Board*, [1900] 2 Q. B. 454; 64 J. P. 647; 36 Digest 131, 869), but in *British Columbia Electric Railway Co., Ltd. v. Gentile*, [1914] A. C. 1034; 36 Digest 131, 1, the decision in

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Markey's case was disapproved, and in *Venn v. Tedesco*, [1926] 2 K. B. 227; 90 J. P. 185; 36 Digest 131, 871, the *British Columbia case* was followed and it was held that the twelve months' limit provided by Lord Campbell's Act applied. An action under that Act can only be maintained by the representative of a deceased person, where that person could, if alive, have himself maintained an action in respect of his injuries against the local authority. A plaintiff's husband met with an accident owing to the negligence of the defendants in the execution of a public duty. In consequence of the injury then received he died two years afterwards without having brought an action against the defendants. Within six months after his death the plaintiff, as his personal representative, brought an action against the defendants; it was held that it could not be maintained, inasmuch as the right of action of the deceased, if alive, would have been barred by s. 1 (a), *supra* (*Williams v. Mersey Docks and Harbour Board*, [1905] 1 K. B. 804; 69 J. P. 196; 36 Digest 131, 870). See also *Gawley v. Belfast Corporation*, [1908] 2 I. R. 34, where the injured man had issued a writ before his death.

An action was brought against a local authority to recover expenses caused by extraordinary traffic on a highway, but it was not commenced within six months of the damage being done. By s. 12 (1) (b) of the Locomotives Act, 1898, proceedings for the recovery of expenses of extraordinary traffic were to be commenced within twelve months after the damage had been done; it was held that the authority was entitled to the protection of the Act of 1893 (*Kent C. C. v. Folkestone Corporation* (1904), 68 J. P. 590; 20 T. L. R. 780). The decision in this case was reversed on appeal on another ground; but so far as regards the point for which it is here cited, it was approved. See *Kent C. C. v. Folkestone Corporation*, *supra*. Cf., however, *Lanarkshire District Committee v. Airdrie Water Trustees* (1906), 8 F. (Ct. of Sess.) 777; 38 Digest 105, b.

(f) A judgment by consent was held to be a judgment "obtained" within the meaning of this provision, and to carry costs as between solicitor and client unless otherwise agreed between the parties (*Shaw v. Herefordshire C. C.*, [1899] 2 Q. B. 282; 63 J. P. 659; 38 Digest 131, 969); but in *Aird v. Tarbert School Board* (1906), 44 Sc. L. R. 26, Lord PEARSON doubted whether the provision applied where judgment is entered by consent. But a defendant does in substance obtain a judgment within the meaning of the section so as to entitle himself to solicitor and client costs, if an order is made dismissing the action for want of prosecution (*Gilbert v. Gosport and Alverstoke U. D. C.*, [1916] 2 Ch. 587; 81 J. P. 89; 38 Digest 132, 973). So also where the court held that an action was useless and an abuse of legal process (*Webster v. Bakewell R. D. C. (No. 2)* (1916), 80 J. P. 437; 86 L. J. Ch. 89; 38 Digest 132, 974). But the court will not stay proceedings in an action on the ground that it has not been brought within six months as required by this Act (*Wright v. Prescott U. D. C.* (1916), 81 J. P. 43; 86 L. J. Ch. 221; 38 Digest 213, 479).

In a Scotch case it appeared that in an action against a public body for injury caused by the negligence of their servant, the Act was not pleaded. The defenders succeeded in the action and moved for their expenses to be taxed as between agent and client. It was held that it was competent to found on the Act with regard to expenses though it was not pleaded on the record: but that to entitle a public authority to take advantage of the Act the authority must either itself aver, and if necessary prove, that the act complained of was done in the execution of a public duty, or else it must be able to point to averments by the other party to that effect; and that as neither of these conditions was fulfilled, the expenses awarded fell to be taxed only as between party and party (*Hunter v. Dundee Water Commissioners*, [1920] S. C. 628).

Notwithstanding the use of the word "shall" in this provision, there is power for good cause to deprive the defendants of costs under R. S. C., Order LXV., r. 1: see *Bostock v. Ramsey U. D. C.*, [1900] 2 Q. B. 616; 64 J. P. 660; 38 Digest 131, 964 (overruling on this point *Cree v. St. Pancras Vestry*, [1899] 1 Q. B. 693; 38 Digest 107, 764; and *Roberts v. Mayor, etc. of Wrexham* (1897), 102 L. T. News. 395 (a county court case)); *Aird v. Tarbert School Board* (1906), 44 Sc. L. R. 223; *East v. Berkshire C. C.* (1911), 76 J. P. 35; 106 L. T. 65; 38 Digest 131, 965; *Att.-Gen. v. West Ham Corporation*, p. 4884, *ante*. But otherwise no special direction is necessary for taxation as between solicitor and client, nor need the judgment show upon the face of it that the action was one falling within the Act (*North Metropolitan Tramways Co. v. London C. C.*, [1898] 2 Ch. 145; 62 J. P. 488; 38 Digest 131, 966).

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This Act has not repealed s. 118 of the County Courts Act, 1888 (3 Halsbury's Statutes 881), so far as actions against public authorities are concerned, and, therefore, where an authority are successful defendants in county court proceedings, their costs must be taxed as between solicitor and client according to the county court scale (*Tory v. Dorchester Corporation*, [1907] 1 K. B. 393; 71 J. P. 88; 38 Digest 132, 972).

Where the plaintiff failed on one issue, but otherwise succeeded, he was allowed his costs of the action as between party and party, but the defendants were allowed costs of the issue on which they succeeded as between solicitor and client, the two sets of costs to be set off (*Roberts v. Gwyrfaï R. D. C.*, [1899] 1 Ch. 583; 63 J. P. 181; 38 Digest 132, 970).

In *Leckhampton Quarries Co., Ltd. v. Ballinger and Cheltenham R. D. C.* (1904), 68 J. P. 464; 20 T. L. R. 559; 38 Digest 132, 971, the plaintiffs claimed a declaration that their land was not subject to five alleged public rights of way. They succeeded as to the most important, but failed as to the remaining four, which were much less important. The judge gave them their general costs of the action, except so far as they had been increased by the issues upon which they had failed, and on those issues the defendants were given their costs as between solicitor and client. Upon a motion to vary the order (69 J. P. 54), the defendants asked for the general costs of the action as between solicitor and client, except so far as they were increased by any issue upon which they had failed, and contended in support that whenever there are several causes of action combined in one action or proceeding, then if the defendants, being a public authority, succeed as to any one of those causes of action, the result of the statute is that they are entitled to the whole costs of the action except so far as increased by any matter on which they have failed. The judge dismissed the motion on the ground that the plaintiffs had substantially succeeded in their action, and that therefore the case was brought within the ordinary rule that, when a plaintiff has substantially succeeded, he gets the general costs of the action except so far as they have been increased by any issues upon which he has failed. An appeal from this decision was dismissed (69 J. P. 377; 93 L. T. 93).

Tender of
amends.

(g) Tender of amends is no answer at common law to a claim for unliquidated damages, nor is the common law altered in this respect by the Judicature Acts (*Davys v. Richardson* (1888), 21 Q. B. D. 202; 42 Digest 369, 4138). Where a statute makes a tender of amends a sufficient answer to an action, it is not necessary for the defendant to pay the money into court unless the statute requires it in addition to the tender (*Jones v. Gooday* (1842), 9 M. & W. 736; 38 Digest 116, 333; *per PARKE, B.*). On this principle it would seem that R. S. C., Order XXII., r. 3, is not applicable to cases of plea of tender under this Act. An offer of compensation under the P. H. A., 1875, s. 308, *ante*, p. 4515, where the defendants dispute the plaintiff's title, does not amount to a sufficient tender (*Oleckheaton U. D. C. v. Firth* (1898), 62 J. P. 536; 42 Sol. Jo. 669; 19 Digest 183, 1334).

In *Smith v. Northleach R. D. C.*, [1902] 1 Ch. 197; 66 J. P. 88; 38 Digest 132, 976, the defendants paid money into court in respect of one issue out of several with a denial of liability. The plaintiff proceeded with the action for some time afterwards, but ultimately accepted the sum paid into court in satisfaction of all the issues. She recovered her costs of the one issue up to the date of payment in, and the defendants obtained party and party costs of the other issues, and also costs of the one issue after payment in, the court holding that they were not entitled to solicitor and client costs from the date of payment in, inasmuch as s. 1 (c), *ante*, p. 4876, is confined to cases in which an action is "proceeded with" to judgment, and does not apply to a discontinuance under Order XXVI., r. 1, where money is paid into court under Order XXII., with denial of liability and not in satisfaction.

The discretion which the trial judge possesses of depriving a successful defendant of costs for good cause so far as s. 1 (b), *ante*, p. 4876, is concerned, is apparently not exercisable so far as s. 1 (c) is concerned: see *per VAUGHAN WILLIAMS, L.J.*, in *Bostock v. Ramsey U. D. C.*, [1900] 2 Q. B. 616; 64 J. P. 660; 38 Digest 131, 964. It has already been pointed out that the Act does not apply in the case of an application for a certiorari to quash an auditor's surcharge. An application in such a case to tax the auditor's costs as between solicitor and client was therefore refused (*Roberts v. Battersea Metropolitan Borough Council* (1914), 78 J. P. 265; 38 Digest 119, 861).

(h) Therefore, this section will not apply to proceedings against a county borough council under the P. H. A., 1875, s. 299, *ante*, p. 4508, in so far as such proceedings can still be brought.

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Section 1.**

2. There shall be repealed as to the United Kingdom so much of any public general Act as enacts that in any proceeding to which this Act applies—

- (a) the proceeding is to be commenced in any particular place ; or
- (b) the proceeding is to be commenced within any particular time ;
or
- (c) notice of action is to be given ; or
- (d) the defendant is to be entitled to any particular kind or amount of costs, or the plaintiff is to be deprived of costs in any specified event ; or
- (e) the defendant may plead the general issue ;

and in particular there shall be so repealed the enactments specified in the Schedule to this Act to the extent in that Schedule mentioned.

This repeal shall not affect any proceeding pending at the commencement of this Act (a).

(a) The Schedule, *infra*, contains a long list of repealed enactments, and is here set out only in so far as it repeals portions of statutes included in the present Work.

3. This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution, or intended execution, of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament (a), when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding.

Saving as to
Scotland.

(a) The Public Health (Scotland) Act, 1897, is such an Act (*Montgomerie & Co., Ltd. v. Haddington Corporation*, [1908] S. C. 127).

4. [Commencement of Act.]

5. This Act may be cited as the Public Authorities Protection Act, Short title. 1893.

SCHEDULE.

ENACTMENTS REPEALED.

<i>Session and Chapter.</i>	<i>Title.</i>
26 Geo. 3, c. 71 - <i>in part.</i>	<i>The Knackers Act, 1786— in part ; namely,— Section eighteen.</i>
1 & 2 Will 4, c. 32 <i>in part.</i>	<i>The Game Act, 1831— in part ; namely,— Section forty-seven.</i>
38 & 39 Vict. c. 55 <i>in part.</i>	<i>The Public Health Act, 1875— in part ; namely,— Section two hundred and sixty-four.</i>

Section 5.

THE LOCAL GOVERNMENT ACT, 1894.

(56 & 57 VICT. c. 73.)

An Act to make further provision for Local Government in England and Wales. [5th March 1894.]

PART I. (a)

PARISH MEETINGS AND PARISH COUNCILS.

Constitution of Parish Meetings and Parish Councils.

* * * *

(a) Practically the whole of this Part of the Act is now repealed and replaced by the L. G. A., 1933, *ante*, p. 735. The only sections which now remain in force are ss. 5—8, 13, 14, 16 and 19, which are set out so far as unrepealed.

Except where otherwise stated italicised words were repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

Powers and Duties of Parish Councils and Parish Meetings.

5.—(1) (a) . . .

(a) This sub-section was repealed by the R. and V. A., 1925, s. 69 (1), *ante*, p. 2233, and the R. and V. A. (Repeals, etc.) Order, 1927, *ante*, p. 3605, as from April 1st, 1927.

Overseers are abolished by s. 62 of that Act, *ante*, p. 2222, and their powers and duties are transferred to the rating authority unless otherwise provided by the Overseers Order, 1927 (1927, S. R. and O., No. 55), *ante*, p. 3595.

(2) *As from the appointed day—*

(a) *The churchwardens of every rural parish shall cease to be overseers, and an additional number of overseers may be appointed to replace the churchwardens (a), and*

(b) *References in any Act to the churchwardens and overseers shall, as respects any rural parish, except so far as those references relate to the affairs of the church, be construed as references to the overseers, (b) and*

(c) *The legal interest in all property vested either in the overseers (b) or in the churchwardens and overseers (b) of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment (c).*

(a) This paragraph was repealed by the R. and V. A., 1925, s. 69 (1), and the R. and V. A. (Repeals, etc.) Order, 1927, as from April 1st, 1927.

(b) Overseers are abolished by s. 62 (1) of the R. and V. A., 1925, and by sub-s. (3) of that section references to overseers in any Act shall be construed as references to the rating authority or other person to whom the powers referred to are transferred by the Overseers Order, 1927, *ante*, p. 3595.

(c) This sub-section was repealed by the L. G. A., 1933, and reference should now be made to s. 48 of that Act, *ante*, p. 782.

6.—(1) Upon the parish council of a rural parish coming into office, **Section 6.**
there shall be transferred to that council :

- (a) The powers, duties, and liabilities of the vestry of the parish except—
- (i) so far as relates to the affairs of the church or to ecclesiastical charities ; and
- (ii) any power, duty, or liability transferred by this Act from the vestry to any other authority :
- (b) The powers, duties, and liabilities of the churchwardens of the parish, except so far as they relate to the affairs of the church or to charities, or are powers and duties of overseers (a), *but inclusive of the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor rate under the Burial Act, 1855 : Provided that such obligations shall not in the case of any particular parish be deemed to attach, unless or until the churchwardens subsequently to the passing of this Act shall give a certificate, as in the Burial Act, 1855, provided, in order to obtain the repayment of such expenses out of the poor rate (b) :*
- (c) The powers, duties, and liabilities of the overseers (a) or of the churchwardens and overseers (a) of the parish with respect to—
- (i) *appeals or objections by them in respect of the valuation list, or appeals in respect of the poor rate, or county rate, or the basis of the county rate (c) ; and*
- (ii) *the provisions of parish books and of a vestry room or parochial office, parish chest, fire engine, fire escape (d), or matters relating thereto ; and*
- (iii) *the holding or management of parish property, not being property relating to affairs of the church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds or for gardens or otherwise for the benefit of the inhabitants or any of them :*
- (d) *The powers exercisable with the approval of the Local Government Board by the board of guardians for the poor law union comprising the parish in respect of the sale, exchange, or letting of any parish property (e).*

Transfer of
certain
powers of
vestry and
other
authorities
to parish
council.

The provisions of this sub-section do not concern district councils, except in so far as they give to parish councils powers which may be conferred on urban district councils under L. G. A., 1933, s. 271, *ante*, p. 1152. Where, however, such powers have been conferred, some decisions must be observed.

An award under an Inclosure Act of 1799 ordered that the herbage on the awarded public and private roads should be let by auction yearly by the surveyor of highways for the parish or such other person and under such restrictions and regulations as the occupiers of lands and tenements in vestry should appoint, and that the proceeds should go towards the repair of the roads in the parish. G. Drove (a private road) was one of the roads mentioned in the award and the herbage on it was always let annually by auction. Before 1894 it was let by the vestry and the proceeds applied in repairing the roads of the parish. After 1894 it was let by the parish council and the proceeds handed to the district council who applied them in reduction

**Note to
Section 6.**

of the amount due for road repair from the parish. An action was brought by the Attorney-General, on the relation of the district council, and by the district council, for damages for injury to the letting value of the herbage, alleged to be due to the defendants' wrongful depasturing the drove, and for an injunction. It was held that the title to the herbage was originally in the parishioners, or, under Poor Relief Act, 1819, s. 17 (14 Halsbury's Statutes 497), in the churchwardens and overseers as trustees for them, and was then, under the L. G. A., 1894, ss. 6 (1), *supra*, and 67, *post*, p. 4918, in the parish council; and that the district council had no right of action (*Att.-Gen. v. Garner* (1907), 71 J. P. 357). See, however, as to this case, *Weir v. Fermanagh C. C.*, [1913] 1 I. R. 193.

The transfer of the powers, duties, and liabilities of the vestry do not make the parish council indictable for non-repair of highways (*R. v. Shipley Parish Council* (1897), 61 J. P. 488; 13 T. L. R. 486).

In the case of applications by urban councils for the powers of a parish council under s. 6 (1) (c) (iii), the Ministry of Health require definitely to be informed (a) what property there is to which these provisions would apply, and (b) when and how such property was acquired. It is also advisable to give a reference, if possible, to any correspondence which may have taken place at any time on the subject of this property either with the Minister or either of his predecessors, the L. G. B. and the Poor Law Board.

In regard to the power as to closed churchyards, it will be observed that even the issue of an order under s. 271 of the L. G. A., 1933, *ante*, p. 1152, will not give an urban council control over a closed churchyard unless and until a certificate is given under the Burial Act, 1855, s. 18 (2 Halsbury's Statutes 224). A churchyard may be wholly closed, closed subject to exceptions, or closed in part, but it is beyond the scope of this work to discuss the cases to which the provision in the Act of 1855 (*op. cit.* 218) does or does not apply. It should be noted, however, that by the Parochial Church Councils (Powers) Measure, 1921 (6 Halsbury's Statutes 73), which obtained the Royal Assent on July 1st, 1921, there was transferred to the *parochial church council* of every parish the care and maintenance of the churchyard (including a closed churchyard) with all rights possessed by the churchwardens to recover from overseers (now the rating authority) the cost of maintaining a closed churchyard. In pursuance of this Measure (which, under the Church of England Assembly (Powers) Act, 1919 (*op. cit.* 55), has the effect of an Act of Parliament) it is now for the parochial church council to issue a certificate if they find themselves without funds for maintenance purposes.

As regards Wales and Monmouthshire also the law has been altered. The Welsh Church Act, 1914, s. 8 (1) (a) (viii) (*op. cit.* 1167), provided that the Welsh Commissioners should by order, transfer to the "representative body," if so requested by that body, any closed burial grounds in Wales or Monmouthshire; if not so transferred, the burial ground of any parish was to be vested in the existing incumbent during his incumbency and on the determination thereof in the burial board, urban district council, parish council, or other local authority, according to circumstances, s. 8 (1) (b). Section 25 of the Act (*op. cit.* 1180) transferred to the council of every borough and urban district in Wales and Monmouthshire, except where a closed churchyard was transferred to the representative body, the obligations of churchwardens in the same terms as the L. G. A., 1894, transferred such obligations to parish councils, viz. wherever the expenses fell upon the poor rate, now general rate, see note (b), *infra*. By the Welsh Church (Temporalities) Act, 1919 (*op. cit.* 1192), the Welsh Commissioners might postpone the transfer of property vested in them to local authorities and the latter are not bound to accept the transfer until the Secretary of State so directs.

(a) Overseers were abolished by s. 62 (1) of the R. and V. A., 1925, *ante*, p. 2222. Their duties and powers are now transferred to the rating authority or other person appointed for the particular purpose by the Overseers Order, 1927, *ante*, p. 3595.

(b) The latter part of this paragraph has been repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1285.

(c) This paragraph was repealed by s. 69 of the R. and V. A., 1925, *ante*, p. 2233. See the R. and V. A. (Repeals, etc.) Order, 1927, *ante*, p. 3605.

(d) The words in italics in this paragraph have been repealed, partly by the

L. G. A., 1933, *ante*, p. 735, and partly by the Fire Brigades Act, 1938, Sched. III. (Vol. V. and 31 Halsbury's Statutes 605).

(e) This paragraph was repealed by Sched. XII., Pt. VII., of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 1019.

Note to
Section 6.

(2) . . .

This sub-section, which dealt with complaints or representations as to unhealthy dwellings and obstructive buildings by parish councils, was repealed by s. 136 and Sched. VI., Housing Act, 1925 (13 Halsbury's Statutes 1071, 1077). Power to make complaints or representations under the Housing Act, 1936, is conferred on parish councils by ss. 154 (2), 169 (1), *ibid.*, *ante*, pp. 1746, 1756.

* * * * *

7.—(1) *As from the appointed day (a)*, in every rural parish the parish meeting shall, exclusively, have the power of adopting any of the following Acts, inclusive of any Acts amending the same (all which Acts are in this Act referred to as "the adoptive Acts"); namely,—

Transfer of
powers under
adoptive
Acts.

(a) The Lighting and Watching Act, 1833 ;

3 & 4 Will. 4,
c. 90.

(b) *The Baths and Washhouses Acts*, 1846 to 1882 (b) ;

9 & 10 Vict.
c. 74 ; 45 & 46
Vict. c. 30.

(c) The Burial Acts, 1852 to 1885 ;

15 & 16 Vict.
c. 85 ; 48 & 49
Vict. c. 21.

(d) The Public Improvements Act, 1860 ;

23 & 24 Vict.
c. 30.

(e) The Public Libraries Act, 1892.

55 & 56 Vict.
c. 53.

(2) Where under any of the said Acts a particular majority is required for the adoption or abandonment of the Act, or for any matter under such Act, the like majority of the parish meeting or, if a poll is taken, of the parochial electors, shall be required, and where under any of the said Acts the opinion of the voters is to be ascertained by voting papers, the opinion of the parochial electors shall be ascertained by a poll taken in manner provided by this Act.

(3) Where under any of the said Acts the consent or approval of, or other act on the part of, the vestry of a rural parish is required in relation to any expense or rate, the parish meeting shall be substituted for the vestry, and for this purpose the expression "vestry" shall include any meeting of ratepayers or voters.

(4) Where there is power to adopt any of the adoptive Acts for a part only of a rural parish, the Act may be adopted by a parish meeting held for that part.

(5) Where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council.

(6) This Act shall not alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts, and any such rate shall be made and charged as heretofore, and any property applicable to the payment of such expenses shall continue to be so applicable.

Section 7.

(7) When any of the adoptive Acts is adopted for the whole or part of a rural parish after the appointed day, and the parish has a parish council, the parish council shall be the authority for the execution of the Act.

(8) For the purposes of this Act the passing of a resolution to provide a burial ground under the Burial Acts, 1852 to 1885, shall be deemed an adoption of those Acts.

(a) The words in italics in sub-s. (1) are repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

(b) Sub-para. (b) is repealed by P. H. A., 1936, s. 346, Sched. III., *ante*, pp. 720, 731.

Additional
powers of
parish
council.

8.—(1) A parish council shall have the following additional powers, namely, power—

- (a) *To provide or acquire buildings for public officers and for meetings and for any purposes connected with parish business or with the powers or duties of the parish council or parish meeting (a) ; and*
- (b) *To provide or acquire land for such buildings and (a) for a recreation ground and for public walks ; and*
- (c) *To apply to the Board of Agriculture under section nine of the Commons Act, 1876 (b) ; and*
- (d) *To exercise with respect to any recreation ground, village green, open space, or public walk, which is for the time being under their control, or to the expense of which they have contributed, such powers as may be exercised by an urban authority under section one hundred and sixty-four of the Public Health Act, 1875, or section forty-four of the Public Health Acts Amendment Act, 1890, in relation to recreation grounds or public walks, and sections one hundred and eighty-three to one hundred and eighty-six of the Public Health Act, 1875, shall apply accordingly as if the parish council were a local authority within the meaning of those sections (c) ; and*
- (e) *To utilise any well, spring or stream, within their parish and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person (d) ; and*
- (f) *To deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health, but so as not to interfere with any private right or the sewage or drainage works of any local authority (d) ; and*
- (g) *To acquire by agreement any right of way, whether within their parish or an adjoining parish, the acquisition of which is beneficial to the inhabitants of the parish or any part thereof (e) ; and*
- (h) *To accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof ; and (a)*
- (i) *To execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish pro-*

perty (f), not being property relating to affairs of the church (g) or held for an ecclesiastical charity; and

- (k) To contribute towards the expense of doing any of the things above mentioned, or to agree or combine with any other parish council to do or contribute towards the expense of doing any of the things above mentioned.

Many of the powers mentioned in this sub-section are already possessed by urban district councils under the Public Health and other Acts. See, as to offices, the L. G. A., 1933, s. 125, *ante*, p. 915; as to recreation grounds, the P. H. A., 1875, s. 164, *ante*, p. 4451; P. H. A., 1890, ss. 44, 45, *ante*, pp. 4818—9; P. H. A., 1925, s. 56, Vol. V., *post*; as to commons and open spaces, the Commons Acts and Open Spaces Acts; as to wells, springs, etc., the P. H. A., 1936, s. 116, *ante*, p. 353; as to ponds, ditches, etc., *ibid.*, ss. 259 *et seq.*, *ante*, pp. 520 *et seq.*; as to rights of way, P. H. A., 1875, s. 154, *ante*, p. 4425; as to combination with other councils, P. H. A., 1936, s. 272, *ante*, p. 550.

The L. G. B. (now the M. of H.) apparently attached a restricted meaning to paragraph (i) in relation to the former paragraph (h). Thus, where an urban council who, not being a burial authority, had not the powers of the Burial Act, 1852, s. 41 (2 Halsbury's Statutes 204), asked for the powers of s. 8 (1) (h) and (i), in order to accept and maintain a hearse and hearse house, the Board seemed to take the view that paragraph (i) would not enable the council to incur expense in maintenance.

(a) The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1285.

(b) See this section, *ante*, p. 4567.

(c) Note that this power applies only to grounds, etc., which are for the time being under the control of the parish council, or to the expense of which they have contributed. The section does not itself confer any control on the council (still less, vest any property in them) and, *semble*, the provision as to grounds to the expense of which they have contributed does not entitle them to exercise the powers mentioned without the consent of the owner of the grounds. See also as to the powers of a parish council with respect to commons and open spaces the Commons Act, 1899, *post*, p. 4982, and the Open Spaces Act, 1906, *post*, p. 5016.

(d) This paragraph was repealed by the P. H. A., 1936, Sched. III., *ante*, p. 727.

A parish council cannot in their own name without the Attorney-General maintain an action to enforce a right of the inhabitants of the parish to the use of a well or spring (*Stoke Parish Council v. Price*, [1899] 2 Ch. 277; 63 J. P. 502; 33 Digest 34, 182; cf. *Sheringham U. D. C. v. Holsey*, [1904] W. N. 83; 68 J. P. 395; 36 Digest 213, 556). The Ministry of Health do not consider that a parish council are empowered by the paragraph to carry out any works of magnitude involving the laying of mains, the construction of reservoirs, etc. These are within the province of the district council, who also have the requisite powers for breaking up streets, charging of water rates, etc.

(e) It may be important for an urban authority to possess this power. See first note.

(f) The powers of this sub-section in relation to parish property are conferred upon the council of any county borough or urban district and the parish meeting of any rural parish not having a parish council by s. 115 (3) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 956. That section provides for the transfer of parish property vested in a board of guardians at April 1st, 1930.

(g) See as to the meaning of this term, *St. George's, Hanover Square (Rector and Churchwardens) v. Westminster Corporation*, [1910] A. C. 225; 74 J. P. 153; 7 Digest 551, 287.

(2) [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1285.]

(8) [Repealed by the P. H. A., 1936, Sched. III., *ante*, p. 731.]

Section 8.

(4) Notice of any application to the Board of Agriculture in relation to a common shall be served upon the council of every parish in which any part of the common to which the application relates is situate.

Notice of any application under the Commons Act, 1876, *ante*, p. 4563, in relation to any common within their district must also be served upon the district council. See s. 26 (2), *post*, p. 4908. The Board of Agriculture has now been superseded by the Minister of Agriculture (Ministry of Agriculture and Fisheries Act, 1919; 3 Halsbury's Statutes 451).

* * * * *

Footpaths
and roads.

13.—(1) The consent of the parish council and of the district council shall be required for the stopping, in whole or in part, or diversion, of a public right of way within a rural parish (a), and the consent of the parish council shall be required for a declaration that a highway in a rural parish is unnecessary for public use and not repairable at the public expense (b), and the parish council shall give public notice of a resolution to give any such consent, and the resolution shall not operate—

- (a) Unless it is confirmed by the parish council at a meeting held not less than two months after the public notice is given; nor
- (b) If a parish meeting held before the confirmation resolve that the consent ought not to be given.

Forms for use under this sub-section will be found in the *Encyclopædia of Forms and Precedents*, Vol. VII., at pp. 195 *et seq.*

In considering this section and the notes thereto, it should be borne in mind that the word "highways" in the Highway Acts includes "roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways and pavements" (Highway Act, 1835, s. 5; 9 Halsbury's Statutes 50); and further that the powers and duties of the "surveyor" of highways for any parish which were transferred to the rural district council (P. H. A., 1875, s. 144, *ante*, p. 4350, and s. 25 (1) of this Act, *post*, p. 4905, have now been transferred to the county councils by s. 30 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904. County councils may delegate their highway functions to district councils, see ss. 35 and 36, *ibid.*, Vol. V. and 10 Halsbury's Statutes 910, 911. As to who, prior to 1894, constituted the "vestry" for the purposes of the 1835 Act, see *Wright v. Frant Overseers* (1863), 4 B. & S. 118; 27 J. P. 645; 26 Digest 478, 1905.

The functions of the district council under this sub-section are expressly saved by the proviso to s. 30 (1) of the L. G. A., 1929.

The consents required by the sub-section in the text are therefore additional to the requirements prescribed by the sections referred to in the notes, *infra*.

See also s. 19 (8), *post*, p. 4904, as to the application of this section to parish meetings.

Diversion and
stopping up.

(a) Under the Highway Act, 1835, ss. 84—92, 9 Halsbury's Statutes 97—104, as amended by the provisions just referred to, if an urban district (or borough) council deem it expedient that a highway should be stopped up or diverted, they must request two justices to view the same. "Any other party" who desires to stop up or divert a highway must submit his proposal to the council; if they do not agree to the proposal, there is an end of the matter; if they do agree, they must request two justices to view, as before. If upon such view it appears to the justices that the way may be diverted with advantage, or is unnecessary, they must direct the council's officer to fix notices at the place and by the side of each end of the highway from whence it is proposed to be diverted or stopped up, and to advertise the same notice in a local newspaper for four successive weeks, and to fix the like notice upon the church doors of every parish in which the highway lies for four successive Sundays. Since the coming into operation of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, it would seem that in rural districts it is now again necessary to invoke action by the vestry inasmuch as the powers of the vestry are no longer vested in rural and are apparently not vested in county councils. Upon proof that all the

**Note to
Section 13.**

requirements of the Act have been complied with, the justices grant their certificate, stating their reasons for thinking that the highway should be diverted or is unnecessary, and such certificate is enrolled at quarter sessions. As to the matters to be stated in a justices' certificate, see *R. v. Wallace* (1879), 4 Q. B. D. 641; 43 J. P. 493; 26 Digest 482, 1938; and as to what must be shown on the plan delivered to the justices certifying, see *R. v. Surrey JJ., Ex parte Locke-King*, [1908] 1 K. B. 374; 72 J. P. 53; 26 Digest 483, 1945. Any person thinking himself aggrieved by the proposed diversion or stopping up of the highway may appeal to quarter sessions by giving to the council fourteen days' notice in writing of such appeal (s. 88; and Quarter Sessions Act, 1849 (11 Halsbury's Statutes 293); see *R. v. Maule* (1871), 41 L. J. M. C. 47; 35 J. P. 596; 26 Digest 484, 1960); and upon such appeal a jury at sessions will determine whether the proposed diversion will be more commodious or whether the highway is unnecessary, and whether the appellant would be aggrieved by the diversion or stopping up (as to the effect of findings of the jury, see *Walker v. York Corporation*, [1906] 1 K. B. 724; 70 J. P. 270; 26 Digest 484, 1958), and if the appeal is upon the ground of defects in the certificate of the justices, the court will decide as to its sufficiency (*R. v. Worcestershire JJ.* (1854), 3 El. & Bl. 447; 18 J. P. 263; 26 Digest 482, 1940). If there is no appeal, or if the appeal fails, quarter sessions will make an order for the diversion or stopping up of the way. If the appeal succeeds, no such order will be made. For a fuller discussion of this subject and the numerous other decisions with reference thereto, see Pratt on Highways (17th edn.), pp. 291 *et seq.*

(b) The proceedings relating to a declaration that a highway is unnecessary for Discontinu- public use and not repairable at the public expense will be found in the Highway ance of Act, 1864, s. 21 (9 Halsbury's Statutes 148), and the Highways and Locomotives repair. Amendment Act, 1878, s. 24 (9 Halsbury's Statutes 179).

Under the Act of 1864 such proceedings can only be taken by an authority which is the successor of a highway board, *e.g.* a county council in relation to roads in a rural district (s. 30 (1), L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904). The proceedings are commenced by a request to two justices to view the highway, and thereupon the proceedings are to go on in like manner as proceedings under the Highway Act, 1835 (9 Halsbury's Statutes 50), for the stopping up or diversion of a highway with the necessary variations.

Under the Act of 1878 the proceedings can be taken by any authority liable to keep the highway in question in repair, and differ from those which may be taken under the Act of 1864. The authority make an application to the court of summary jurisdiction of the petty sessional division in which any parish in which the highway lies is situate that two justices of the court shall view the highway. If on such view the court is of opinion that the application should be proceeded with, they must appoint a time and place for hearing objections to the application, such appointment to be made by a month's public notice, and also by a month's notice to the owners and occupiers of all lands abutting upon the highway in question. The applicant authority must also give public notice of the appointed time and place by advertisement in a local newspaper once in each of the four weeks preceding the hearing, and by causing a copy of such notice to be affixed fourteen days before the hearing to the doors of every church and chapel in the parish in which the highway is situate, or in a conspicuous position near the highway, and the application cannot be entertained by the court unless the giving of this public notice is proved to its satisfaction. On the day and at the place appointed the court must hear any objections, and must either dismiss the application or make an order declaring the highway unnecessary for public use and that it ought not to be repaired at the public expense. If such an order is made the expenses of repairing the highway will cease to be defrayed out of any public rate. An appeal lies from such an order to quarter sessions. Under both Acts (1864 and 1878) a court of quarter sessions, upon the application of any person interested in the maintenance of the highway in respect of which such an order has been made and upon certain evidence, may direct that the liability to repair such highway at the public expense shall be revived.

(2) A parish council may, subject to the provisions of this Act with respect to restrictions on expenditure, undertake the repair and maintenance of all or any of the public footpaths within their parish, not

Section 13. being footpaths at the side of a public road, but this power shall not nor shall the exercise thereof relieve any other authority or person from any liability with respect to such repair or maintenance.

Maintenance
of footpaths.

Public footpaths which are highways repairable by the inhabitants at large, are, of course, under the control of the highway authority of the place in which they are situate. That authority remains liable for the repair and maintenance of such of the footpaths mentioned in the text as are repairable by the inhabitants at large, even where a parish council has undertaken to repair and maintain them. Footpaths at the side of a public road, even if such road is not repairable by the inhabitants at large, are exempted from the power here given to a parish council.

The powers of this sub-section are readily granted by the M. of H. to any urban district council desiring them. See notes to L. G. A., 1933, s. 271, *ante*, p. 1152.

It will be observed that a parish council (and an urban district council obtaining an order under the former s. 33) derive no power from this sub-section to compel a landowner to repair a footpath traversing his land. Neither can the council prevent a farmer from periodically ploughing up a footpath which has ordinarily been ploughed up. *Cf. Mercer v. Woodgate* (1869), L. R. 5 Q. B. 26; 34 J. P. 261; 26 Digest 417, 1357; *Arnold v. Holbrook* (1873), L. R. 8 Q. B. 96; 37 J. P. 229; 26 Digest 319, 515. But see *Dennis & Sons, Ltd. v. Good* (1918), 88 L. J. K. B. 388; 83 J. P. 110; 26 Digest 417, 1361.

As regards stiles on footpaths the L. G. B. expressed the opinion that, as a general rule, when an existing stile on a public footpath in a rural parish having a parish council is in so defective a state as to render it necessary for the enjoyment by the public of their right of using the path that such stile should be repaired, the parish council can execute the repairs. The same holds good with regard to gates, and bridges forming part of footpaths. As to the dedication of a highway subject to gates for farm purposes, see *Att.-Gen. v. Meyrick* (1915), 79 J. P. 515; 26 Digest 304, 357.

On the question of the power of a parish council to substitute gates for stiles the Board expressed themselves favourably as to a parish council's powers, provided, however, that the consent of the landowner is obtained to any consequent enlargement of the rights of the public.

A parish council has no power to expend money for the repair of any part of a footpath situate outside the parish. The council can, however, combine with the parish council in which the part of the footpath requiring repair is situate for the purpose of keeping the whole length of footpath in order, and a joint committee may be appointed under s. 91 of the L. G. A., 1933, *ante*, p. 854, for the purpose of exercising the powers of a parish council under s. 13 (2) in respect of the footpath.

Public
property and
charities.

14.—(1) Where trustees hold any property for the purposes of a public recreation ground or of public meetings, or of allotments, whether under Inclosure Acts or otherwise, for the benefit of the inhabitants of a rural parish, or any of them, or for any public purpose connected with a rural parish, except for an ecclesiastical charity, they may, with the approval of the Charity Commissioners, transfer the property to the parish council of the parish, or to persons appointed by that council, and the parish council, if they accept the transfer, or their appointees, shall hold the property on the trusts and subject to the conditions on which the trustees held the same.

The powers hereby conferred upon a parish council may be conferred upon an urban authority by order under s. 271 of the L. G. A., 1933, *ante*, p. 1152. As to what is an ecclesiastical charity, see s. 75, *post*, at p. 4921.

(2) Where overseers of a rural parish as such are, either alone or jointly with any other persons, trustees of any parochial charity, such number of the councillors of the parish or other persons, not exceeding the number of the overseer trustees, as the council may appoint, shall

be trustees in their place, and, when the charity is not an ecclesiastical charity, this enactment shall apply as if the churchwardens as such were specified therein as well as the overseers. Section 14.

Overseers were abolished by s. 62, R. and V. A., 1925, *ante*, p. 2222, and their powers and duties transferred to the rating authority or other person specified in the Overseers Order, 1927.

The expression "parochial charity" is defined by s. 75, *post*, p. 4921, to mean "a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes." The section also defines "ecclesiastical charity."

The effect of the last part of this sub-section is that the parish council can appoint trustees in the place of the churchwardens where they, whether joined with the overseers or not, are made trustees by the instrument creating a non-ecclesiastical charity (*Re Perry Almshouses*, *Re Ross' Charity*, [1899] 1 Ch. 21; 63 J. P. 52; 8 Digest 371, 1781).

The powers of a parish council under this sub-section may be conferred on an urban authority under s. 271 of the L. G. A., 1933, *ante*, p. 1152.

(3) Where the governing body of a parochial charity other than an ecclesiastical charity does not include any persons elected by the rate-payers or parochial electors or inhabitants of the parish, or appointed by the parish council or parish meeting, the parish council may appoint additional members of that governing body not exceeding the number allowed by the Charity Commissioners in each case; and if the management of any such charity is vested in a sole trustee, the number of trustees may, with the approval of the Charity Commissioners, be increased to three, one of whom may be nominated by such sole trustee and one by the parish council or parish meeting. Nothing in this sub-section shall prejudicially affect the power or authority of the Charity Commissioners, under any of the Acts relating to charities, to settle or alter schemes for the better administration of any charity.

The powers of a parish council under this sub-section may be conferred on an urban authority under L. G. A., 1933, s. 271, *ante*, p. 1152.

(4) Where the vestry of a rural parish are entitled, under the trusts of a charity other than an ecclesiastical charity, to appoint any trustees or beneficiaries of the charity, the appointment shall be made by the parish council of the parish, or in the case of beneficiaries, by persons appointed by the parish council.

(5) The draft of every scheme relating to a charity, not being an ecclesiastical charity, which affects a rural parish, shall, on or before the publication of the notice of the proposal to make an order for such scheme in accordance with section six of the Charitable Trusts Act, 1860, be communicated to the council of the parish, and where there is no parish council to the chairman of the parish meeting, and, in the case of a council, the council may, subject to the provisions of this Act with respect to restrictions on expenditure, and to the consent of the parish meeting, either support or oppose the scheme, and shall for that purpose have the same right as any inhabitants of a place directly affected by the scheme.

As to the meaning of this sub-section, see *Re Berkhamsted Grammar School*, [1908] 2 Ch. 25; 72 J. P. 273; 19 Digest 589, 194.

Section 14.

(6) The accounts of all parochial charities, not being ecclesiastical charities, shall annually be laid before the parish meeting of any parish affected thereby, and the Charitable Trusts Amendment Act, 1855, shall apply with the substitution in section forty-four of the parish meeting for the vestry, and of the chairman of the parish meeting for the churchwardens, and the names of the beneficiaries of dole charities shall be published annually in such form as the parish council, or where there is no parish council the parish meeting, think fit.

(7) The term of office of a trustee appointed under this section shall be four years, but of the trustees first appointed as aforesaid one-half, as nearly as may be, to be determined by lot, shall go out of office at the end of two years from the date of their appointment, but shall be eligible for re-appointment.

(8) The provisions of this section with respect to the appointment of trustees, except so far as the appointment is transferred from the vestry, shall not apply to any charity until the expiration of forty years from the date of the foundation thereof, or, in the case of a charity founded before the passing of this Act by a donor or by several donors any one of whom is living at the passing of this Act, until the expiration of forty years from the passing of this Act, unless with the consent of the surviving donor or donors.

(9) Whilst a person is trustee of a parochial charity he shall not, nor shall his wife or any of his children, receive any benefit from the charity.

15. [Repealed by the L. G. A., 1938, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1285.]

Complaint
by parish
council of
default
of district
council.

16.—(1) Where a parish council resolve that a rural district council ought to have provided the parish with sufficient sewers, or to have maintained existing sewers, or to have provided the parish with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or to have enforced with regard to the parish any provisions of the Public Health Acts which it is their duty (a) to enforce, and have failed so to do (b), or that they have failed to maintain and repair any highway in a good and substantial manner (c), the parish council may complain to the county council, and the county council, if satisfied after due inquiry (d) that the district council have so failed as respects the subject-matter of the complaint, may resolve that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council, and they shall be transferred accordingly.

This section provides an alternative method of enforcing the execution of its duties by a rural district council to that given to the Minister of Health by s. 57 (3) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 923, or s. 322 of the P. H. A., 1936, *ante*, p. 665. Under this sub-section the Minister may function *ex proprio motu*; under the provision in the text, the matter does not come before the Minister, it is in each case a question only for the county council.

The M. of H. holds the view that a county council cannot act under this section where the power of the local authority is discretionary only.

A similar power of complaint is given to parish meetings by s. 19 (8), *post*, p. 4904.

This sub-section has been repealed so far as regards functions of a rural district

council which are functions under the P. H. A., 1936, by *ibid.*, s. 346, Sched. III., Pt. V., *ante*, pp. 720, 731; and so far as regards functions of a rural district council which are functions under the Food and Drugs Act, 1938, by *ibid.*, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1456.

(a) As to the meaning of this word, see *London C. C. v. Bermondsey Borough Council*, [1915] 3 K. B. 305; 79 J. P. 449; 38 Digest 225, 563.

(b) Up to this point the section follows the words of the P. H. A., 1875, s. 299, *ante*, p. 4508, which is repealed in its application to district councils by the L. G. A., 1929, s. 57 (4) and Sched. XII., Pt. IV, Vol. V. and 10 Halsbury's Statutes 923, 1016. Section 57 (3), *ibid.*, which replaces s. 299, is wider in its terms and reference should be made to the text in Vol. V., *post*, and the notes thereto. Under that sub-section the necessity for a complaint has gone and the Minister may act under the section whenever it appears to him that a default has been made. His attention will no doubt be drawn to defaults in many cases by something in the nature of a complaint.

(c) These words are not repealed by the L. G. A., 1929, although under that Act rural district councils cease to be highway authorities and their functions as such authorities are transferred to the county council (s. 30, Vol. V. and 10 Halsbury's Statutes 904).

Under s. 35, Vol. V. and 10 Halsbury's Statutes 910, a county council may delegate its functions as highway authority to a district council, but the district council will then act as agents for the county council, and s. 36 (1), *ibid.*, provides a remedy where a district council make default in exercising their delegated functions.

It will apparently, therefore, be open to a parish council to draw the attention of the county council to a default by a rural district council in exercising its delegated functions in respect of highways under this section, but the council will upon such a complaint doubtless take action under s. 36 (1) of the L. G. A., 1929; Vol. V., *post*.

(d) It would appear that in order to effect a "due inquiry," notice must be given to the district council of the complaint, and such council must be afforded an opportunity of explaining why they have not taken action, and that an order made without observing these requirements is not enforceable against the district council (*R. v. Huntingdonshire C. C.* (1902), C. C. Times Supp. 44).

Reference might be made to *R. v. West Sussex C. C., Ex parte Arundel Corporation* (1921), 85 J. P. 162; 26 Digest 293, 247, a case decided in connection with the hearing of a similar complaint under s. 10 of the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 4603.

Section 63 (2), *post*, p. 4917, makes provision for the mode of making such complaints if a district is situate in more than one county.

(2) *Upon any complaint under this section the county council may, instead of resolving that the duties and powers of the rural district council be transferred to them, make such an order as is mentioned in section two hundred and ninety-nine of the Public Health Act, 1875, and may appoint a person to perform the duty mentioned in the order, and upon such appointment sections two hundred and ninety-nine to three hundred and two of the Public Health Act, 1875, shall apply with the substitution of the county council for the Local Government Board.*

This sub-section is repealed by L. G. A., 1929, Sched. XII., Pt. IV.; Vol. V. and 10 Halsbury's Statutes 1016, consequent upon the repeal of the sections referred to in the text in so far as they relate to district councils.

(3) *Where a rural district council have determined to adopt plans for the sewerage or water supply of any contributory place within the district, they shall give notice thereof to the parish council of any parish for which the works are to be provided before any contract is entered into by them for the execution of the works.*

This sub-section was repealed by the P. H. A., 1936, Sched. III., Pt. V., *ante*, p. 731.

Note to
Section 16.

Section 19.

Provisions
as to small
parishes.

19. In a rural parish not having a separate parish council, the following provisions shall, *as from the appointed day*, but subject to provisions made by a grouping order, if the parish is grouped with some other parish or parishes, have effect :

- (8) The provisions of this Act with respect to the stopping or diversion of a public right of way, or the declaring of a highway to be unnecessary and not repairable at the public expense (*a*), and with respect to a complaint to a county council of a default by a district council (*b*), shall apply, with the substitution of the parish meeting for the parish council.

(*a*) See s. 13 (1), *ante*, p. 4898.

(*b*) See s. 16 (1), *ante*, p. 4902.

PART II.

GUARDIANS AND DISTRICT COUNCILS.

Practically the whole of this Part also of the Act has been repealed and replaced by the L. G. A., 1933, *ante*, p. 735, and the only sections remaining are now ss. 21, 25—27, 32 and 35, which are set out as amended.

Names of
county
districts and
district
councils.

21. *As from the appointed day,—*

- (1) Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts ; but nothing in this section shall alter the style or title of the corporation or council of a borough :

Section 75, *post*, p. 4920, incorporates the L. G. A., 1888, s. 100, *ante*, p. 4765, which defines an urban authority. Urban sanitary districts were of three kinds : 1st, Municipal boroughs ; 2nd, Improvement Act districts ; and 3rd, Local Government districts. In these the urban sanitary authorities were respectively the borough council, the improvement commissioners, and the local board. The title of the borough and its council is not to be altered, but Improvement Act districts and local government districts are now called urban districts, and the urban sanitary authorities over these are now called urban district councils.

- (2) *For every rural sanitary district there shall be a rural district council whose district shall be called a rural district :*

This sub-section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1285.

- (3) In this and every other Act of Parliament, unless the context otherwise requires, the expression "district council" shall include the council of every urban district, whether a borough or not, and of every rural district, and the expression "county district" shall include every urban and rural district whether a borough or not.

Apparently (see s. 35, *post*, p. 4912) this provision does not apply to a county borough. See further, the first note to the P. H. A. A., 1907, s. 13, *post*, p. 5041. By

s. 134 of the L. G. A., 1929, Vol. V., *post*, "district" is defined for the purposes of that Act as meaning a county district, that is to say, a non-county borough or other urban district or a rural district.

**Note to
Section 24.**

The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1285, except so far as they apply to any enactment passed before June 1, 1933.

* * * * *

25.—(1) *As from the appointed day*, there shall be transferred do the district council of every rural district all the powers, duties, and liabilities of the rural sanitary authority in the district (a), *and of any highway authority in the district (b), and highway boards shall cease to exist*, and rural district councils shall be the successors of the rural sanitary authority *and highway authority*, and shall also have as respects highways all the powers, duties, and liabilities of an urban sanitary authority under sections one hundred and forty-four to one hundred and forty-eight of the Public Health Act, 1875, and those sections shall apply in the case of a rural district and of the council thereof in like manner as in the case of an urban district and an urban authority (b). *Provided that the council of any county may by order postpone within their county or any part thereof the operation of this section, so far as it relates to highways, for a term not exceeding three years from the appointed day or such further period as the Local Government Board may on the application of such council allow (c).*

Powers of district councils with respect to sanitary and highway matters.

This sub-section has been repealed so far as regards functions of a council which are functions under the P. H. A., 1936, by *ibid.*, s. 346, Sched. III., Pt. V., *ante*, pp. 720, 731; and so far as regards functions of a council which are functions under the Food and Drugs Act, 1938, by *ibid.*, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1456.

(a) These are the powers conferred upon a rural sanitary authority as such by Sanitary the Public Health Acts and other statutes, including powers under adoptive Acts powers. in cases where those Acts had been adopted by the rural sanitary authority. Any urban powers which might have been conferred upon the pre-existing rural authority by Order of the L. G. B. under the P. H. A., 1875, s. 276, *ante*, p. 4502, or the P. H. A., 1890, s. 5, *ante*, p. 4803 (now P. H. A., 1936, s. 13, *ante*, p. 19) were also transferred to the rural district council. The section would not seem to apply to the case of a rural district constituted after the appointed day by some order under the Act, but the Order would probably make all necessary provision.

(b) The words in italics were repealed by L. G. A., 1929, Sched. XII., Pt. III., Highway Vol. V. and 10 Halsbury's Statutes 1016, in consequence of the provisions of s. 30, powers. Vol. V. and 10 Halsbury's Statutes 904. Under that section rural district councils cease to be highway authorities and the county councils become the highway authority in respect of all rural districts in the county as from April 1st, 1930. Under s. 35, Vol. V. and 10 Halsbury's Statutes 910, a county council may delegate its highway functions in respect of all or any of the roads in the district to the district council, but even when such delegation has taken place the district council will not be the highway authority, the roads will remain vested in the county council and the district council will act merely as agents for the county council upon the terms and conditions laid down in s. 36, Vol. V. and 10 Halsbury's Statutes 911, and the resolution of delegation.

(c) All such postponement orders have expired.

(2) Where a highway repairable *ratione tenuræ* appears on the report of a competent surveyor not to be in proper repair, and the person liable to repair the same fails when requested so to do by the district council to place it in proper repair, the district council may place the highway in proper repair, and recover from the person liable to repair the highway the necessary expenses of so doing.

**Note to
Section 25.**
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*Ratione
tenuræ high-
ways.*

Consequent upon the transfer of the functions of highway authority in rural districts from the rural district council to the county council by s. 30 of the L. G. A., 1929; Vol. V., *post*, functions under this section cease to be exercisable by rural district councils (sub-s. (3)) and become exercisable only by county councils unless under s. 35 any functions have been delegated to the rural district council (s. 36 (2)).

The liability to repair a highway *ratione tenuræ* exists where an individual or corporation is bound to repair a highway by reason of a condition attached to his or its tenure of certain lands. For modern cases in which the nature or existence of such a liability has been under discussion, see *R. v. Barker* (1890), 25 Q. B. D. 213; 54 J. P. 615; 26 Digest 369, 944; *Heath v. Weaverham Overseers*, [1894] 2 Q. B. 108; 58 J. P. 557; 26 Digest 370, 954; *Dalton Overseers v. N. E. Rail. Co.*, [1900] A. C. 345; 64 J. P. 612; 26 Digest 370, 956; *Esher and Dittons U. D. C. v. Marks* (1902), 66 J. P. 243; 71 L. J. K. B. 309; 26 Digest 368, 943; *Ferrand v. Bingley U. D. C.*, [1903] 2 K. B. 445; *sub nom. Bingley U. D. C. v. Ferrand*, 67 J. P. 370; 26 Digest 370, 955; *Maude v. Thirsk Union* (1914), 78 J. P. N. 100; *Re Earl of Stamford and Warrington, Payme v. Grey* [1911] 1 Ch. 648; 75 J. P. 346; 26 Digest 371, 970. The text affords a simple remedy for enforcing the liability. There must be a report of a competent surveyor (not necessarily the surveyor to the council), and there must be a failure on the part of the person liable to put the highway into proper repair. The remedy given is confined to the occupier, and creates no liability in the owner of the land to repay the sums so expended (*Cuckfield R. D. C. v. Goring*, [1898] 1 Q. B. 865; 62 J. P. 358; 26 Digest 369, 945; *Daventry R. D. C. v. Parker*, [1900] 1 Q. B. 1; 63 J. P. 708; 26 Digest 369, 946).

The expenses appear to be recoverable by action only. A county court judge held that the jurisdiction of the county court in such an action was ousted under the County Courts Act, 1888, ss. 56 and 60 (3 Halsbury's Statutes 841, 846), on the ground that the estate sought to be charged *ratione tenuræ* was worth more than £50 per annum (*Barnstaple R. D. C. v. Rudd* (1897), 103 L. T. Newsp. 11); a new trial was afterwards granted, and resulted in a verdict for the plaintiffs. As to evidence of liability to repair *ratione tenuræ*, see *Rundle v. Hearle*, [1898] 2 Q. B. 83; 26 Digest 369, 951; *L. & N. W. Rail. Co. v. Commissioners of Sewers for Fobbing Level* (1896), 66 L. J. Q. B. 127; 75 L. T. 629; 44 Digest 83, 641; *Esher and Dittons U. D. C. v. Marks*, and *Ferrand v. Bingley U. D. C.*, *supra*.

(3) Where a highway authority receives any contribution from the county council towards the cost of any highway under section eleven, sub-section (10), of the Local Government Act, 1888, such contribution may be made, subject to any such conditions for the proper maintenance and repair of such highways, as may be agreed on between the county council and the highway authority.

By the L. G. A., 1888, s. 11 (10), *ante*, p. 4732, a county council may, if they think fit, contribute towards the cost of the maintenance, repair, enlargement, and improvement of any public highway or public footpath in the county, though the same is not a "county road" (see the notes to that sub-section, at p. 4732, *ante*). The text amends this provision by enabling the council to impose terms and conditions upon making such contributions.

(4) *Where the council of a rural district become the highway authority for that district, any excluded part of a parish under section two hundred and sixteen of the Public Health Act, 1875, which is situate in that district, shall cease to be part of any urban district for the purpose of highways, but until the council become the highway authority such excluded part of a parish shall continue subject to the said section.*

Words in italics repealed by L. G. A., 1929, Sched. XII., Pt. III., Vol. V. and 10 Halsbury's Statutes 1016, consequent upon the transfer of highway powers in rural districts to the county council.

(5)—(6) [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

(7) The powers conferred on the Local Government Board by the said section two hundred and seventy-six, or by any enactment applying that section, may be exercised on the application of a county council, or with respect to any parish or part of a parish on the application of the parish council of that parish. Section 25.

This sub-section has been repealed so far as regards functions of a council which are functions under the P. H. A., 1936, by *ibid.*, s. 346, Sched. III., Pt. V., *ante*, pp. 720, 731; and so far as regards functions of a council which are functions under the Food and Drugs Act, 1938, by *ibid.*, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1456.

Under the P. H. A., 1875, s. 276, *ante*, p. 4502, the application for urban powers must come from the rural authority or from persons rated to the poor rate to the extent of one-tenth of the district or of any contributory place therein for which the urban powers are applied for. Under the text it may come from the county council or a parish council, but in either case the powers will be conferred on the rural district council alone. In some instances an order has been issued upon the application of a parish council, but no case is known to the editors in which a county council have been the applicants. If the particular provision in question is a *power* and not a *duty* and the rural district council are not willing to exercise this power, the precise value of such an order is not apparent, unless it be a power which it is their duty to discharge, in which case a remedy for default by the district council is provided by s. 57 (3) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 923. S. 276 of the Act of 1875 is repealed and replaced by s. 13 of the P. H. A., 1936, *ante*, p. 19, except so far as may be material for the purposes of any unrepealed enactment in the Act of 1875 or any Act directed to be construed therewith.

26.—(1) It shall be the duty of every district council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within their district or in an adjoining district in the county or counties in which the district is situate, where the stoppage or obstruction thereof would in their opinion be prejudicial to the interests of their district, and to prevent any unlawful encroachment on any roadside waste within their district. Duties and powers of district council as to rights of way, rights of common and roadside waste.

The functions of rural district councils under this sub-section are expressly saved by the proviso to s. 30 (1) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904.

In so far as it relates to highways within an urban district in respect of which the urban district council is the highway authority the provision is merely declaratory, for the duty mentioned is one which would by law devolve upon the highway authority as such. In rural districts and in respect of "county roads" in urban districts, in relation to which the county council is the highway authority, the duty therefore devolves upon both the county and district council. It is the duty of a highway authority to prevent the stopping up or obstruction of any highway, and with regard to encroachment on roadside wastes, it is to be observed that the greensward by the side of the highway and within the fences is in general part of the highway, as much as the metalled portion, and any obstruction thereof is a public nuisance, which may be prevented by indictment or injunction. See *R. v. United Kingdom Telegraph Co.*, and cases cited therewith in note (I) to the L. G. A., 1888, s. 11 (1), *ante*, p. 4729. As to obstruction of a highway by the erection and maintenance of gates, see *Att.-Gen. v. Meyrick* (1915), 79 J. P. 515; 26 Digest 304, 357.

An urban council has power to remove encroachments upon any highway vested in it by the P. H. A., 1875, s. 149, *ante*, p. 4375, without first taking proceedings either summarily or by way of indictment against the person responsible for the encroachment (*Reynolds v. Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296; 26 Digest 449, 1654). And according to the dicta in *Louth U. D. C. v. West* (1896), 60 J. P. 600; 65 L. J. Q. B. 535; 26 Digest 391, 1176, it would appear that this power is exercisable by rural councils also on the ground that a statutory duty is cast upon all district councils to protect highways and roadside wastes. See also

**Note to
Section 26.**

Harris v. Northamptonshire C. C., *post*, p. 4191, as to the position of a county council in this respect prior to the passing of the L. G. A., 1929. But it was strongly emphasized both in *Reynolds v. Presteign U. D. C.*, [1896] 1 Q. B. 604; 60 J. P. 296; 26 Digest 449, 1654, and in *Urban Housing Co., Ltd. v. Oxford Corporation*, [1940] Ch. 40; [1939] 4 All E. R. 211; 104 J. P. 15, C. A.; Digest Supp., that direct action to remove alleged encroachments should not be taken in cases where there is a dispute whether in fact there has been an encroachment. In the *Louth Case*, *supra*, it was held that the authority might recover the expenses of removal by action from the person responsible. And see as to costs in the County Court in an action to recover expenses, *Dartford R. D. C. v. Stone Court, &c. Co.* (1917), 39 M. C. C. 169.

An urban council discharging duties under this sub-section is in the same position as a private individual protecting his own property, and is not acting judicially. Consequently if a member uses his influence in his own private interest, the acts of the council are not thereby invalidated (*Murray v. Epsom L. B.*, [1897] 1 Ch 35; 61 J. P. 71; 33 Digest 17, 65).

Reference may be made to the cases collected in note (i) on p. 4385, *ante*, showing that a highway authority cannot legally sanction a permanent obstruction to a highway.

It should be observed that the duty of the district council extends to rights of way in an adjoining district, if their own district is prejudiced.

Sub-section (4) of this section requires the district council to take action upon the representation of a parish council.

(2) A district council may with the consent of the county council for the county within which any common land is situate aid persons in maintaining rights of common where, in the opinion of the council, the extinction of such rights would be prejudicial to the inhabitants of the district; and may with the like consent exercise in relation to any common within their district all such powers as may, under section eight of the Commons Act, 1876, be exercised by an urban sanitary authority in relation to any common referred to in that section; and notice of any application to the Board of Agriculture in relation to any common within their district shall be served upon the district council.

The necessity for the consent of the county council should be observed.

The aid which the district council may give is not specified, but presumably it includes a grant of money in aid of legal proceedings instituted with reference to the rights in dispute; and see the next sub-section. There is much misapprehension on the subject of rights of common. These consist strictly of the rights of tenants of the manor, whether freeholders or commoners, over the waste lands of the manor, which belong to the lord of the manor subject to such rights. They may consist of common of pasture, turbary, estovers, foldage, or the like. As to the right of action for interference with rights of common, see *King v. Brown, Durant & Co.* [1913] 2 Ch. 416; 11 Digest 50, 731; *Hope v. Osborne*, [1913] 2 Ch. 349; 77 J. P. 317; 11 Digest 46, 642.

Members of the public, as such, have, in strictness, no rights of common, but there may be in the inhabitants of any particular village or district a right depending on ancient custom to use the wastes or part of them for purposes of recreation. See *Hall v. Nottingham* (1875), 1 Ex. D. 1; 17 Digest 4, 8, and cases therein cited. A custom for the inhabitants of several adjoining parishes to exercise the right of recreation over land situate in one of such parishes only is bad (*Edwards v. Jenkins*, [1896] 1 Ch. 308; 60 J. P. 167; 17 Digest 16, 150). As to the distinction between a right of recreation and a right of way, see *Abercromby v. Town Commissioners of Fermoy*, [1900] 1 I. R. 302; *Dyce v. Lady James Hay* (1852), 1 Macq. H. L. 305; 19 Digest 16, 42.

Section 8 of the Commons Act, 1876, which contains important provisions, will be found *ante*, p. 4566. See also the Commons Act, 1899, *post*, p. 4982, and ss. 193 and 194 of the Law of Property Act, 1925, Vol. V., *post*. The Board of Agriculture has now been superseded by the Minister of Agriculture (Ministry of Agriculture and Fisheries Act, 1919; 3 Halsbury's Statutes 451).

(3) A district council may, for the purpose of carrying into effect this section, institute or defend any legal proceedings, and generally take such steps as they deem expedient. Section 26.

This provision is to some extent explanatory of the preceding sub-sections, which enable the council to protect public rights of way and to aid in maintaining rights of common. But it does not exclude other methods of aiding in the maintenance of rights, *e.g.*, by a grant of money. It expressly enables the council to institute or defend legal proceedings, if they think fit, for the protection of a right of way, and they might, where they are in possession of a right of common, institute proceedings to prevent any illegal enclosure of or encroachment on the common. The power of the court to make a declaration under R. S. C., Order XXV., r. 5, is important in this connection: see *Locke-King v. Woking U. D. C.*, *ante*, p. 4729. It has apparently been assumed that the powers given by this sub-section include power to compromise proceedings (see *Sprigg v. Warblington U. D. C.* (1899), *Times*, November 18th, and *Molynex v. Horsham R. D. C.* (1900), *Times*, July 19th); but it may be doubted whether in the absence of the Attorney-General a council could effectually bind the public in purporting to abandon any right claimed (*cf. Newton Abbot R. D. C. v. Wills, infra*). See also note to sub-s. (4).

See, too, *Greenwell v. Howell* and *R. v. Norfolk C. C.*, cited in the note to the next sub-section, and also the cases as to costs, where a local authority is unsuccessfully sued, collected at p. 4889, *ante*.

(4) Where a parish council have represented to the district council that any public right of way within the district or an adjoining district in the county or counties in which the district is situate has been unlawfully stopped or obstructed, or that an unlawful encroachment has taken place on any roadside waste within the district, it shall be the duty of the district council, unless satisfied that the allegations of such representation are incorrect, to take proper proceedings accordingly; and if the district council refuse or fail to take any proceedings in consequence of such representation, the parish council may petition the county council for the county within which the way or waste is situate, and if that council so resolve the powers and duties of the district council under this section shall be transferred to the county council.

In a rural parish not having a separate parish council a representation may be made under this sub-section by the parish meeting (see s. 19 (8), *ante*, p. 4904). When a representation is made to the district council under this sub-section they must consider it with a view to satisfying themselves whether it is well founded or not. If they think it is well founded they must take legal proceedings which may be (1) summary, under the Highway Act, 1835, s. 72, or the Highway Act, 1864, s. 51 (9 *Halsbury's Statutes* 86, 161); or (2) by indictment; or (3) by action for a declaration and injunction; or they may abate any nuisance or obstruction and defend any resulting action. In the case of an action by the council it has apparently been held that it is not necessary to join the Attorney-General as a plaintiff (*Newton Abbot R. D. C. v. Wills* (1913), 77 J. P. 333; 26 Digest 392, 1186); but see *Wallasey L. B. v. Gracey*, p. 653, *ante*. If the council think that the representation is not well founded, they may refuse to take proceedings, but upon such refusal an appeal lies to the county council, who may thereupon take the like proceedings upon resolution in manner provided by s. 63, *post*, p. 4916.

The county council are now under a similar duty in respect to all highways in rural districts and to certain county roads in urban districts as the highway authority in respect thereof (see note to sub-s. (1), *ante*, p. 4907). It will not, therefore, be necessary for a county council to transfer the powers of the district council by resolution.

If a council acting under this section assert the existence of a public right of way over a man's land and threaten and intend to exercise it by their servants and agents, an action for an injunction and declaration will lie against them. *Quære* whether a mere assertion of the existence of the right and the provision of assistance to

**Note to
Section 26.**

individuals who are already litigating it on their own initiative would give a cause of action against the council (*Thornhill v. Weeks*, [1913] 1 Ch. 438; 77 J. P. 231; 26 Digest 391, 1180; *Thornhill v. Weeks* (No. 2), [1913] 2 Ch. 464; 77 J. P. 327; 26 Digest 392, 1183). An action was brought by certain land owners against private individuals for removing obstructions to an alleged public right of way. The district council having passed and acted on a resolution to defend the action under the above section, were themselves made defendants, and a declaration that there was no public right of way was asked against them. On an application by the district council to be struck out as defendants, the plaintiffs were allowed to amend by alleging that the district council threatened and intended to use the alleged public right of way by their servants or agents. The district council then put in a defence stating that they neither claimed nor denied that the public right of way claimed by their co-defendants in fact existed, and they denied any threat or intention to use it by their servants or agents, but, though really innocent of any such threat or intention, they in fact conducted the whole defence on the main issue, namely, the existence of the public right of way, up to the trial, and failed to establish it. It was held that the plaintiffs were entitled to a declaration with costs against all the defendants, including the district council (*Thornhill v. Weeks* (No. 3), [1915] 1 Ch. 106; 78 J. P. 154; 26 Digest 392, 1184). See also as to costs, *Att.-Gen. v. Bowen* (1914), 78 J. P. N. 220; *London County Council v. Bermondsey Borough Council*, [1915] 3 K. B. 305; 79 J. P. 449; 38 Digest 225, 563. Officials of a district council or a county council, acting in default of a district council, may, acting under direction of the council, assert the public right by removal of an obstruction, and in the event of an action against them failing, they will be entitled to costs as between solicitor and client, under the Public Authorities Protection Act, 1893, *ante*, p. 4875 (*Greenwell v. Howell*, [1900] 1 Q. B. 535; Digest, Pleading 45, 371). See further as to costs where an unsuccessful action is brought against a public authority, *Leckhampton Quarries Co., Ltd. v. Ballinger* and other cases collected therewith at p. 4890, *ante*. The district council, or, in their default, the county council, might also, if they thought fit, pay the costs of the defendants in an action brought by the owners of an estate against private persons for trespass in removing obstacles to an alleged public right of way (*R. v. Norfolk C. C., Ex parte Green*, [1901] 2 K. B. 268; 65 J. P. 454; 26 Digest 391, 1179). In Scotland it has been held that an authority who procure themselves to be added as defendants to an action cannot claim the benefits of the Public Authorities Protection Act, 1893, *ante*, p. 4875, as to costs (*M'Robert v. Reid* (1914), 51 Sc. L. R. 500).

The herbage at the side of a highway is in many cases the property of the district council or other public authority: see *Coverdale v. Charlton* (1878), 3 Q. B. D. 376; on appeal, 4 Q. B. D. 104; 43 J. P. 268; 26 Digest 329, 616; *Haigh v. West*, [1893] 2 Q. B. 19; 57 J. P. 358; 11 Digest 81, 1013; *Neaverson v. Peterborough R. D. C.*, [1902] 1 Ch. 557; 66 J. P. 404; 11 Digest 34, 452.

Several orders were issued by county councils under this section transferring to themselves the powers and duties of rural district councils as to the taking of proceedings against persons for encroachments prior to the passing of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883.

(5) Any proceedings or steps taken by a district council or county council in relation to any alleged right of way shall not be deemed to be unauthorised by reason only of such right of way not being found to exist.

This means that the expenditure of a council incurred in pursuance of this section is not to be regarded as illegally incurred by reason of its being eventually found that the right of way sought to be asserted does not in fact exist.

The expenses of a rural council will presumably be chargeable as general expenses of the whole rural district, unless made special by the Ministry of Health by order under the L. G. A., 1933, s. 190 (3), *ante*, p. 1017 (a course not commonly adopted.)

In the event of a county council incurring expense in default of a rural district council, it is not clear that the debt can be thrown upon part of the district. See s. 63, *post*, p. 4916.

(6) Nothing in this section shall affect the powers of the county council in relation to roadside wastes. **Section 26.**

The powers of the county council as to roadside wastes depend upon the L. G. A., 1888, s. 11, *ante*, p. 4726, and s. 29 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, which impose upon the county council the duty of maintaining "county roads." Under s. 11 of the 1888 Act the county council have the same powers as a highway board for asserting the right of the public to the use and enjoyment of the roadside wastes, and they may abate an encroachment, although the soil is not vested in them (*Harris v. Northamptonshire C. C.* (1897), 61 J. P. 599; 13 T. L. R. 440; 26 Digest 449, 1656).

(7) Nothing in this section shall prejudice any powers exercisable by an urban sanitary authority at the passing of this Act, and the council of every county borough shall have the additional powers conferred on a district council by this section.

This preserved to an urban sanitary authority any special highway powers which they might possess.

27.—(1) *As from the appointed day* the powers, duties, and liabilities of justices out of session in relation to any of the matters following, that is to say,—

Transfer of certain powers of justices to district councils.

(a) The licensing of gang masters :

The Agricultural Gangs Act, 1867 (see *ante*, p. 4262), defines a "gang-master" as one "who hires children, young persons, or women with a view to their being employed in agricultural labour on lands not in his own occupation."

(b) The grant of pawnbrokers' certificates ;

These certificates were previously granted in areas where there was no stipendiary magistrate by the justices in petty sessions under the Pawnbrokers Act, 1872 (see *ante*, p. 4323), upon notice given in accordance with s. 42 of that Act, *ante*, p. 4325; they cannot be refused except on the ground that the applicant has failed to give satisfactory evidence of good character, or that his shop or any adjacent property of his is frequented by thieves or persons of bad character, or that he has failed to comply with the requirements of the Act as to notice (s. 43, *ante*, p. 4325).

Quarter sessions on an appeal against a district council's refusal to grant a pawnbroker's certificate have no jurisdiction to order the appellant's costs to be paid by the council where the council have taken no steps in relation to the appeal and have not appeared at the hearing (*R. v. Northumberland J.J.* (1907), 71 J. P. 331; 96 L. T. 700; 37 Digest 23, 177).

(c) The licensing of dealers in game ;

Until 1894 these licences were granted by justices in special sessions under the Game Act, 1831, s. 18 (see *ante*, p. 4102). There is no appeal against the refusal of such a licence. Two licences are required by every dealer in game, viz., a revenue licence granted by the county council (Finance Act, 1908, s. 6, *post*, p. 5066) and a licence issued by the district council under this section.

(d) *The grant of licenses for passage brokers and emigrant runners ;*

This paragraph was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

(e) The abolition of fairs and alteration of days for holding fairs ;

By the Fairs Act, 1871 (see *ante*, p. 4307), upon representation duly made to him by the magistrates of any petty sessional districts within which any fair is held, or by the owner of any fair, that it would be for the convenience and advantage of the public that any such fair shall be abolished, the Home Secretary may, with the consent of the owner of the fair, order its abolition. By the Fairs Act, 1873 (see *ante*, p. 4327), the Home Secretary, upon the like representation, may order that

**Note to
Section 27.**

any fair shall be held upon other days than those on which it used to be held. The representations which were originally made by justices under these Acts will for the future be made by district councils. Under both Acts advertisements of the representation and of the Order (if any) must be published.

(f) *The execution as the local authority of the Acts relating to petroleum and infant life protection ;*

when arising within a county district, shall be transferred to the district council of the district.

Paragraph (f) was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

(2) *As from the appointed day*, the powers, duties, and liabilities of quarter sessions in relation to the licensing of knackers' yards within a county district shall be transferred to the district council of the district.

The term "county district" includes every urban and rural district whether a borough or not (s. 21 (3), *ante*, p. 4904).

From the refusal of such a licence by a district council appeal lies to quarter sessions under s. 7 of the P. H. A. A., 1890, *ante*, p. 4804, notwithstanding the provision in the text (*R. v. Essex J.J., Ex parte Barking U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345; 38 Digest 224, 557).

This sub-section has been repealed so far as regards functions of a council which are functions under the Food and Drugs Act, 1938, by *ibid.*, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1456.

(3) All fees payable in respect of the powers, duties, and liabilities transferred by this section shall be payable to the district council.

28, 29. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

Guardians in
London
and county
boroughs.

30. . . .

Repealed Poor Law Act, 1927 (12 Halsbury's Statutes 956).

* * * * *

Application
to county
boroughs of
provisions as
to transfer
of justices'
powers.

32. The provisions of this Part of this Act respecting the powers, duties, and liabilities of justices out of sessions, or of quarter sessions, which are transferred to a district council, shall apply to a county borough as if it were an urban district, and the county borough council were a district council.

The provisions referred to are contained in s. 27, *ante*, p. 4911. These powers, duties, and liabilities are transferred to the council of a county borough, as in the case of any other urban district council, this express provision being rendered necessary by s. 35, *infra*.

33. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

* * * * *

Restrictions
on applica-
tion of Act
to London,
etc

35. Save as specially provided by this Act, this Part of this Act shall not apply to the administrative county of London or to a county borough.

The special provisions in this Part of the Act applicable to the county of London and to a county borough are contained in ss. 30—33 (10 Halsbury's Statutes 904, 905, *supra*; 10 Halsbury's Statutes 908) inclusive.

PART III.

AREAS AND BOUNDARIES.

The whole of this Part of the Act (ss. 36—42 (10 Halsbury's Statutes 911—915)) was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

PART IV.

SUPPLEMENTAL (a).

(a) The only remaining sections in this Part of the Act are ss. 53, 62, 63, 65—67, 70 and 75—77. Ss. 43 and 44 (10 Halsbury's Statutes 915, 916), which related to the registration of electors and to elections, were repealed by the Representation of the People Act, 1918, *post*, p. 5167; ss. 45—49 (10 Halsbury's Statutes 916—919) were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286; s. 50 (10 Halsbury's Statutes 919) by the R. & V. A., 1925, Sched. VIII., *ante*, p. 2266; s. 51 (10 Halsbury's Statutes 920) by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286; s. 52 (1) by the L. G. A., 1929, Sched. XII., Pt. VII., *post*; s. 52 (2) by the S. L. R. A., 1908; and s. 52 (3) (10 Halsbury's Statutes 921) by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286. Other sections have been repealed as noted in the text.

53.—(1) Where on the appointed day any of the adoptive Acts is in force in a part only of a rural parish, the existing authority under the Act, or the parish meeting for that part, may transfer the powers, duties, and liabilities of the authority to the parish council, subject to any conditions with respect to the execution thereof by means of a committee as to the authority or parish meeting may seem fit, and any such conditions may be altered by any such parish meeting.

Supplemental provisions as to adoptive Acts.

The adoptive Acts are enumerated in s. 7 of this Act, *ante*, p. 4895. They are the Lighting and Watching Act, 1833 (8 Halsbury's Statutes 1186); the Baths and Washhouses Acts, 1846 to 1925 (13 Halsbury's Statutes 519, 1153); the Burial Acts, 1852 to 1906 (2 Halsbury's Statutes 190 and this Volume); the Public Improvements Act, 1860, *ante*, p. 4250; and the Public Libraries Acts, 1892 to 1919, in this Volume. The second named are now repealed (see note, *ante*, p. 1193).

(2) If the area on the appointed day under any authority under any of the adoptive Acts will not after that day be comprised within one rural parish, the powers and duties of the authority shall be transferred to the parish councils of the rural parishes wholly or partly comprised in the area, or, if the area is partly comprised in an urban district, to those parish councils and the district council of the urban district, and shall, until other provision is made in pursuance of this Act, be exercised by a joint committee appointed by those councils. Where any such rural parish has not a parish council the parish meeting shall, for the purposes of this provision, be substituted for the parish council.

Under sub-s. (1) the executive authority, *e.g.*, a burial board, lighting inspectors, or parish meeting, "may transfer the powers, duties, and liabilities of the authority"; under this sub-section "the powers and duties of the authority shall be transferred." See sub-s. (3), *infra*, and s. 67, *post*, p. 4918, as to the effect of this transfer.

This sub-section had an extensive application, particularly in regard to burial

**Note to
Section 53.**

authorities. In many instances before the passing of this Act a parish in which the Burial Acts were in force was partly in an urban district. That part, speaking generally, became a separate parish. In such cases the provisions of this sub-section applied, and the powers and duties of the board or other authority under the adoptive Act passed upon the appointed day to the governing bodies of the areas which were wholly or partly comprised in the area under the adoptive Act. These governing bodies are, in the case of a rural parish wholly or partly comprised in the area under the adoptive Act, the parish council, where it exists, and where it does not exist, the parish meeting; in the case of an urban district comprising part of the area under the adoptive Act, the urban district council.

The bodies to whom these powers and duties were jointly transferred were required to appoint a joint committee to exercise and perform them. Doubts having arisen whether the provisions of s. 57 (17 Halsbury's Statutes 813) (now repealed) were applicable to a joint committee appointed under this section, the Local Government (Joint Committees) Act, 1897, *post*, p. 4940, was passed and this cleared up part of the difficulty. By that Act in the case of a joint committee appointed under this section for the purposes of the Burial Acts, expenses are to be defrayed and money borrowed and receipts divided by the councils appointing the committee; the consent of the Minister of Health, but no other consent, is necessary to borrowing; and the proceedings of the committee are regulated by Part IV. of the First Schedule to this Act (10 Halsbury's Statutes 830). Differences as to the constitution of any committee may be determined by the Minister; and parish meetings joining in the appointment of a committee have the same power of borrowing as a parish council.

Notwithstanding the provision in the Act of 1897, *post*, p. 4940, that no other consent than that of the Minister of Health shall be necessary to the borrowing of money by the councils appointing the joint committee, the Minister requires evidence of the consent of the parish meeting of a rural parish and of the vestry of an urban parish to the incurring of the expenditure, having been advised that this is still necessary. The consents of those bodies are also required to the site selected for a burial ground; see s. 7 (3) of this Act, *ante*, p. 4895, and the Burial Act, 1852, ss. 19, 26 (2 Halsbury's Statutes 195, 198).

A grant of exclusive rights of burial or a conveyance of lands held for burial purposes cannot apparently be made by a joint committee formed under s. 53 (2). In order to be binding at law a grant or conveyance must be executed and sealed by all the councils or meetings covering the area of the superseded burial board. The action of the committee, however, binds all the councils, so that they can be compelled by suit for specific performance, or by *mandamus*, to affix their seals in order to carry out what has been agreed to by the joint committee.

Similarly lands purchased by a joint committee of this kind must be conveyed to the constituent councils.

In view of the M. of H. only members of the appointing councils are eligible to serve on a joint committee under s. 53.

The provision made by the text was not intended to be permanent; it is to hold good "until other provision is made in pursuance of this Act." The reference seems to be to the power given by sub-s. (4), *infra*, to a county council to alter the boundaries of an area under the adoptive Act.

(3) The property, debts, and liabilities of any authority under any of the adoptive Acts whose powers are transferred in pursuance of this Act shall continue to be the property, debts, and liabilities of the area of that authority, and the proceeds of the property shall be credited, and the debts and liabilities and the expenses incurred in respect of the said powers, duties, and liabilities, shall be charged to the account of the rates or contributions levied in that area, and where that area is situate in more than one parish the sums credited to and paid by each parish shall be apportioned in such manner as to give effect to this enactment.

This obscurely-worded sub-section must be interpreted in the light of s. 67, *post*, p. 4918. The meaning seems to be that when a parish council (under sub-s. (1)) or the governing bodies mentioned in sub-s. (2) become invested with the powers and duties

of a previously existing authority under an adoptive Act, the benefit and the burden of the property, debts, and liabilities of the superseded authority are to remain the benefit and burden of the area of that authority. Where that area is a part of a rural parish and a transfer has been made under sub-s. (1), the parish council will be the authority for the execution of the Act, but the expenses of the execution must be levied upon the part of the parish which has adopted it, either as a "special rate" in cases within s. 3 of the R. and V. A., 1925, *ante*, p. 2124, or as an additional item of the general rate, and not out of a rate levied upon the whole parish. On the other hand, the income (if any) arising out of the execution of the adoptive Act goes in reduction of the special rate or additional item of the general rate, and not in augmentation of the general revenues of the parish. Where the area under the adoptive Act is made up of parts of different parishes (whether rural or not), the executive authority consists of the bodies mentioned in sub-s. (2), acting by their joint committee. The rate must be levied as before the transfer upon the area which has adopted the Act, each part of a parish contributing its apportioned part and having credited to it its apportioned share of the revenue arising under the Act. Provision is made by the Local Government (Joint Committees) Act, 1897, *post*, at p. 4940, as to how the apportionment is to be made in the case of a joint committee for the purposes of the Burial Acts, 1852—1906 (2 Halsbury's Statutes 190 and this Volume); in other cases no provision is made, but presumably the apportionment may be made by the bodies appointing the joint committee upon the basis of rateable value.

The fund for defraying expenses was not altered by the transfer of powers and duties. For instance, it would appear from *R. v. Connaught's Quay Overseers*, *post*, p. 4916, that the share of the expenses of a joint burial committee to be defrayed by an urban council was payable out of the poor rate, not the general district rate, but this point is no longer of practical importance in view of the R. and V. A., 1925, *ante*, p. 2113.

By the L. G. A., 1888, s. 100, *ante*, p. 4765 (incorporated with this Act by s. 75, *post*, p. 4920), the expression "liabilities" includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for that Act be liable or subject to, whether accrued due at the date of the transfer or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose. See cases collected in note to the L. G. A., 1933, s. 151, *ante*, p. 962, as to the meaning to be attached to the word "liabilities." See also *Nash v. Rochford R. D. C.*, [1917] 1 K. B. 384; 81 J. P. 57; 26 Digest 405, 1272.

Agreements may be made under L. G. A., 1933, s. 151 (2), *ante*, p. 967, as to the adjustment of property and liabilities between the authorities interested, and questions as to the transfer of powers, duties, and liabilities may be determined summarily by the High Court under s. 70, *post*, p. 4919.

(4) The county council on the application of a parish council may, by order, alter the boundaries of any such area if they consider that the alteration can properly be made without any undue alteration of the incidence of liability to rates and contributions or of the right to property belonging to the area, regard being had to any corresponding advantage to persons subject to the liability or entitled to the right.

The powers of a county council under this sub-section can only be exercised upon the application of a parish council. No power to apply is given to a district council but such a council may apply to the M. of H. under L. G. A., 1933, s. 271, *ante*, p. 1152, for an order, giving it the power of a parish council under the sub-section, and there are instances in which this procedure has been successfully adopted. The power to "alter the boundaries" does not empower a county council to divide an area into distinct areas and an order of a county council purporting to do this in relation to a burial area comprising two rural parishes would be *ultra vires*. It is also doubtful whether an order under this sub-section would be valid which purported to alter an area under the adoptive Acts which was not in existence on the appointed day. See the word "such" in the sub-section.

Section 54. [Ss. 54—61 (10 Halsbury's Statutes 811—816) were repealed by the L. G. A., 1938, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

Permissive
transfer to
urban district
council of
powers of
other
authorities.

62.—(1) Where there is in any urban district, or part of an urban district, any authority constituted under any of the adoptive Acts, the council of that district may resolve that the powers, duties, property debts, and liabilities of that authority shall be transferred to the council as from the date specified in the resolution, and upon that date the same shall be transferred accordingly, and the authority shall cease to exist, and the council shall be the successors of that authority.

As to the adoptive Acts, see the note to s. 53 (1), *ante*, p. 4913. The present provision refers to a case where such an Act has been adopted in an urban district or part thereof either before or after the appointed day. It has been held that it applies in a county borough (*Kirkdale Burial Board v. Liverpool Corporation*, [1904] 1 Ch. 829; 68 J. P. 289; 33 Digest 55, 337). The transfer is effected by a resolution of the council.

The power given to the councils of urban districts by this section has been used to a great extent and has resulted in the disappearance of numerous burial boards which existed at the date of the Act.

Where a district council takes over the powers, etc. of a special authority executing an adoptive Act, the expenditure of the council in administering the Act must be charged to the area from which the expenses of the superseded authority were defrayed. Thus, it was held that where an urban council takes over the powers and duties of a burial board the expenses incurred by the council in executing the Burial Acts, and the interest upon, and repayments of, money borrowed in pursuance of those Acts were chargeable on the poor rates of the parish or parishes for which the burial board was formed, and were not payable out of the general district rate (*R. v. Connah's Quay Overseers*, [1901] 2 K. B. 174; 65 J. P. 500; 7 Digest 547, 264). This decision supports the submission contained in a former edition "that upon such a transfer being effected the burden of the expenses incurred in the execution of the adoptive Act, and the benefit of the property and income applicable to or arising out of its execution will remain the burden and the benefit of the area under the adoptive Act, and will not be thrown upon or enjoyed by the parts of the urban districts which have not adopted the Act." But see now the R. and V. A., 1925, *ante*, p. 2113.

Reference may be made to Sanitary Act, 1866, s. 44, which is re-enacted by the P. H. A., 1875, Sched. V., *ante*, p. 4528. That section gives power to burial boards in certain cases to transfer their powers to an urban authority.

(2) *After the appointed day* any of the adoptive Acts shall not be adopted for any part of an urban district without the approval of the council of that district.

Provisions
as to county
council
acquiring
powers
of district
council.

63.—(1) Where the powers of a district council are by virtue of a resolution under this Act transferred to a county council, the following provisions shall have effect :

- (a) Notice of the resolution of the county council by virtue of which the transfer is made shall be forthwith sent to the district council and to the Local Government Board :
- (b) The expenses incurred by the county council shall be a debt from the district council to the county council, and shall be defrayed as part of the expenses of the district council in the execution of the Public Health Acts, and the district council shall have the like power of raising the money as for the defraying of those expenses :

- (c) The county council for the purpose of the powers transferred may on behalf of the district council borrow subject to the like conditions, in the like manner, and on the security of the like fund or rate, as the district council might have borrowed for the purpose of those powers :
- (d) The county council may charge the said fund or rate with the payment of the principal and interest of the loan, and the loan with the interest thereon shall be paid by the district council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that fund or rate by the district council :
- (e) The county council shall keep separate accounts of all receipts and expenditure in respect of the said powers :
- (f) The county council may by order vest in the district council all or any of the powers, duties, property, debts, and liabilities of the county council in relation to any of the said powers, and the property, debts, and liabilities so vested shall be deemed to have been acquired or incurred by the district council for the purpose of those powers.

This sub-section will apply where a county council resolves upon complaint by a parish council of the default of a district council that the duties and powers of the district council for the purpose of the matter complained of shall be transferred to the county council (s. 16 and s. 26 (4), *ante*, pp. 4902, 4909). It may also be applied where a county council resolves or is directed to act in default of a council under the Housing Act, 1936, ss. 169, 170—2, *ante*, pp. 1756—1759. The provisions of this section may also be applied with such modifications and adaptations as may be necessary or expedient by an order made by the Minister under s. 57 (3) of the L. G. A., 1929, Vol. V., *post*, transferring to a county council functions in respect of which a district council is in default. It may also be applied in the same way where an order is made by the Minister under s. 36 (2), (4) of the Town and Country Planning Act, 1932 (see *ibid.*, s. 36 (8), *ante*, pp. 1963—1965), or under s. 18 of the Restriction of Ribbon Development Act, 1935 (see *ibid.*, s. 19 (4), *ante*, p. 2041). But it is now repealed so far as regards functions of a council which are functions under the P. H. A., 1936 (see *ibid.*, s. 346, Sched. III., Pt. V., *ante*, pp. 720, 731). or under the Food and Drugs Act, 1938 (see *ibid.*, s. 101, Sched. IV., Pt. I., *ante*, pp. 1451, 1456).

As to the manner in which the expenses of a rural council are to be defrayed, see L. G. A., 1933, s. 190, and notes, *ante*, p. 1016. With regard to the expenses of the county council, these are, under the provision in the text, recoverable as a debt in the High Court or the County Court. Compare the provisions of the P. H. (London) A., 1891, ss. 100, 117 (11 Halsbury's Statutes 1081, 1090) (*London County Council v. Bermondsey Borough Council*, [1915] 3 K. B. 305 ; 79 J. P. 449 ; 38 Digest 225, 563). As to the borrowing powers of a rural council, see notes to L. G. A., 1933, s. 195, *ante*, p. 1023.

Clause (f) enables the county council to hand over any property acquired for the purposes of the exercise of the powers of the district council by the county council, and to put the district council in the same position as regards powers, duties, debts, and liabilities relating to the subject-matter of the complaint, as if the powers of the district council had been exercised by that council in the first instance, and no complaint had been made.

(2) Where a rural district is situate in two or more counties a parish council complaining under this Act may complain to the county council of the county in which the parish is situate, and if the subject-matter of the complaint affects any other county the complaint shall be referred to

**Note to
Section 63.**

a joint committee of the councils of the counties concerned, and any question arising as to the constitution of such joint committee shall be determined by the Local Government Board, and if any members of the joint committee are not appointed, the members who are actually appointed shall act as the joint committee.

Where a complaint is so referred to a joint committee, it appears that such committee will have power to determine whether any action is to be taken in the matter of the complaint, by taking over the powers of the defaulting council. The body to take action will be, it is submitted, the joint committee, and not the county council to whom the complaint was originally made.

**Power to act
through dis-
trict council.**

64. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

**Saving
for harbour
powers.**

65. Where any improvement commission affected by this Act have any powers, duties, property, debts, or liabilities in respect of any harbour, the improvement commission shall continue to exist and be elected for the purpose thereof, and shall continue as a separate body, as if this Act had not passed, and the property, debts, and liabilities shall be apportioned between the district council for the district and the commission so continuing, and the adjustment arising out of the apportionment shall be determined in manner provided by this Act.

This section met the case where the commissioners under an Improvement Act had powers, etc., in respect of a harbour. They continued to be elected and to have the same powers as to the harbour, and their property, debts, and liabilities were apportioned between the district council and the commissioners for harbour purposes.

* * * * *

**Transfer of
property and
debts and
liabilities.**

67. Where any powers and duties are transferred by this Act from one authority to another authority—

- (1) All property held by the first authority for the purpose or by virtue of such powers and duties shall pass to and vest in the other authority, subject to all debts and liabilities affecting the same; and
- (2) The latter authority shall hold the same for the estate, interest, and purposes, and subject to the covenants, conditions, and restrictions for and subject to which the property would have been held if this Act had not passed, so far as the same are not modified by or in pursuance of this Act; and
- (3) All debts and liabilities of the first authority incurred by virtue of such powers and duties shall become debts and liabilities of the latter authority, and be defrayed out of the like property and funds out of which they would have been defrayed if this Act had not passed.

For instances see transfer of powers, etc., of authority under the adoptive Acts to urban district council (s. 62, *ante*, p. 4916); transfer to rural district council of powers, etc., of rural sanitary authority and highway authority (s. 25, *ante*, p. 4905); transfer to district councils of powers of justices out of sessions and of quarter sessions (ss. 27, 32, *ante*, pp. 4911, 4912).

The definition of "liabilities" in the L. G. A., 1888, s. 100, *ante*, p. 4765 (incorporated with this Act by s. 75, *post*, p. 4920), should be referred to. See also *Jackson*

v. Plympton St. Mary R. D. C. (1900), 64 J. P. 168 ; 33 Digest 58, 352, and other cases referred to in note to the L. G. A., 1933, s. 151, *ante*, at p. 962 (*Nash v. Rochford R. D. C.*, [1917] 1 K. B. 384 ; 81 J. P. 57 ; 26 Digest 405, 1272). With reference to sub-s. (3) of the text generally, see *R. v. Connah's Quay Overseers*, *ante*, p. 4916.

See as to the transfer, for the purposes of this Act, of stock standing in the name of an authority, the Local Government Act, 1933, s. 275, *ante*, p. 1155.

[Ss. 68, 69 (10 Halsbury's Statutes 818, 819), repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

Note to
Section 67.

70.—(1) If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to any parish council, parish meeting, or district council, or any property is or is not vested in the parish council, or in the chairman and overseers of a rural parish, or in a district council, that question, without prejudice to any other mode of trying it, may, on the application of the council, meeting, or other local authority concerned, be submitted for decision to the High Court in such summary manner as, subject to any rules of court, may be directed by the court ; and the court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

Summary
proceeding
for deter-
mination of
questions as
to transfer of
powers.

This provision resembles the L. G. A., 1888, s. 29, *ante*, p. 4740, under which many questions were decided. Rules under the section came into operation on October 1st, 1894, and April 6th, 1895. They provide that the summary proceeding for submitting any question under this section for the decision of the High Court shall be by special case to be agreed upon by the parties, or in default of such agreement to be settled by an arbitrator to be agreed on by the parties or appointed by a judge in chambers, or to be settled by a judge in chambers. The special case, when settled, is to be filed in the Crown Office within eight days, and to be put into the Crown Paper for argument. See 98 L. T. Jo. 169, 577.

Under the corresponding section of the Act of 1888, *ante*, p. 4740, it was held that the court would not answer abstract questions on the construction of the Act : see *Re Cardigan C. C.* (1890), 54 J. P. 792.

(2) If any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary, or other person interested, be determined in the first instance by the Charity Commissioners, subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891.

Under the Charitable Trusts Acts, 1860, s. 8 (2 Halsbury's Statutes 365), and 1869, ss. 10, 11 (*op. cit.* 374), the Attorney-General or any person authorised by him or by the commissioners may present a petition to the Chancery Division of the High Court in a summary way appealing from certain orders of the commissioners. The conditions of appeal which are there prescribed, and which will apply to appeals under this section, are the following : (1) The petition must be presented within three months after the definitive publication of the order ; and " definitive publication " has been held to mean " the final publication when the time expired for the receipt of suggestions and objections " (*Re Hackney Charities* (1864), 28 J. P. 692 ; 12 W. R. 1131 ; *Re Diptford Parish Lands*, [1934] Ch. 151 ; Digest Supp.). (2) Twenty-one

**Note to
Section 70.**

days' written notice of the intention to appeal must be given to the Charity Commissioners, and to the Attorney-General. (3) The court may deal with the costs, and may require security for costs to be given by an appellant other than the Attorney-General.

A question having arisen as to whether the income of a local charity was or was not exclusively applicable for church purposes, a letter was sent to the Charity Commissioners by the chairman of the parish council setting forth his contention on the subject. The commissioners, after receiving a report, wrote a letter expressing their opinion. It was held that this letter constituted a determination under this sub-section, which was conclusive, not having been appealed against within three months (*Att.-Gen. v. Hughes* (1899), 81 L. T. 679; 48 W. R. 150; 8 Digest 393, 2150).

As to the liability of the Charity Commissioners for costs, see *Re Perry Almshouses*, [1898] 1 Ch. 391, at p. 402.

(3) An appeal shall, with the leave of the High Court or Court of Appeal, but not otherwise, lie to the Court of Appeal against any decision under this section.

Under the corresponding provision in the L. G. A., 1888, s. 29, *ante*, p. 4740, there is no appeal to the Court of Appeal (*Ex parte Kent C. C. and Dover Council*, [1891] 1 Q. B. 725; 55 J. P. 647; 33 Digest 21, 87). The text gives such an appeal, but only with leave; if the High Court refuses leave the Court of Appeal may grant it (*Godman v. Moses* (1900), 69 L. J. Q. B. 823; 83 L. T. 46; 13 Digest 534, 857).

[Ss. 71—74 (10 Halsbury's Statutes 820, 821) repealed by the L. G. A., 1938, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

**Construction
of Act.**

75.—(1) The definition of "parish" in section one hundred of the Local Government Act, 1888, shall not apply to this Act, but, save as aforesaid, expressions used in this Act shall, unless the context otherwise requires, have the same meaning as in the said Act.

By s. 68 (4) of the R. and V. A., 1925, *ante*, p. 2232, it is provided that in every Act whether passed before or after 1925, the expression "parish" shall, unless the contrary intention appears, and subject to any alteration of area made on or after the appointed day (*i.e.* April 1st, 1927) by or in pursuance of any Act, mean a place for which immediately before the appointed day (*i.e.* April 1st, 1927) a separate poor rate was or could be made, or a separate overseer was or could be appointed.

For expressions which are defined by the Act of 1888, *ante*, p. 4765, and have the same meaning when used in this Act, see the Act of 1888, s. 100, *ante*, p. 4765. Such expressions bear the meaning given to them by the earlier Act, "unless the context otherwise requires." It may be mentioned that the definition of "county" in the Act of 1888 is varied (*infra*, sub-s. (2)) so as to include a "county borough," and that the definitions of "district council" and "county district" (which had reference to future legislation which might establish district councils) must now be read as referring to the district councils established by this Act, and to the districts of such councils. See s. 21, *ante*, p. 4904.

(2) In this Act, unless the context otherwise requires—

Any reference to population means the population according to the census of one thousand eight hundred and ninety-one.

The expression "parochial elector," when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a parochial elector of the parish if it were a rural parish.

As to "parochial electors," see the Representation of the People Act, 1918, Sched. 6, r. 2, *post*, p. 5185. The effect of that Act is to substitute the term "local government electors" for "parochial electors." As to who are "local government electors," see s. 3, *post*, p. 5168.

The expression "election" includes both the nomination and the poll. **Section 75.**

See now L. G. A., 1933, Pt. I., *ante*, pp. 736 *et seq.*

The expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

This definition has especial reference to s. 14, *ante*, p. 4900. Persons acting as trustees, though not trustees in the strict legal sense, are included in the term.

The expression "ecclesiastical charity" includes a charity, the endowment whereof is held for some one or more of the following purposes :

- (a) For any spiritual purpose which is a legal purpose ; or
- (b) For the benefit of any spiritual person or ecclesiastical officer as such ; or
- (c) For use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise, by any particular church or denomination ; or
- (d) For the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein ; or
- (e) Otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act ; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

The words "as such" in clause (e) show that no charity is an ecclesiastical charity within that clause unless, upon the true construction of the instrument of endowment, its benefits are exclusively confined to members of a particular church or denomination. Ecclesiastical charities within the meaning of this definition are not confined to charities for the spiritual or religious benefit of a church, but include eleemosynary charities (*Re Perry Almshouses*, *Re Ross' Charity*, [1899] 1 Ch. 21 ; 63 J. P. 52 ; 3 Digest 371, 1781). See also *Re Spendluffe's Charity* (1900), 65 J. P. 72 ; 83 L. T. 498 ; 8 Digest 371, 1782.

The expression "affairs of the church" shall include the distribution of offertories or other collections made in any church.

Cf. as to this phrase, *St. George's, Hanover Square v. Westminster Corporation*, [1910] A. C. 225 ; 74 J. P. 153 ; 7 Digest 551, 287 (a closed burial ground).

The expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which

Section 75.

is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

The expression "vestry" in relation to a parish means the inhabitants of the parish whether in vestry assembled or not, and includes any select vestry either by statute or at common law.

See *R. v. Shipley Parish Council*, *ante*, p. 4362.

The expression "rateable value" means the rateable value stated in the valuation list in force, or, if there is no such list, in the last poor rate.

The expression "county" includes a county borough, and the expression "county council" includes the council of a county borough.

The expression "elementary school" means an elementary school within the meaning of the Elementary Education Act, 1870.

The Elementary Education Act, 1870 (7 Halsbury's Statutes 120), has been repealed and enacted by the Education Act, 1921, ss. 27, 172 (*op. cit.* 142, 215).

The expression "local and personal Act" includes a Provisional Order confirmed by an Act and the Act confirming the Order.

As to what is a local and personal Act, reference may be made to *R. v. London C. C.*, [1893] 2 Q. B. 454; 58 J. P. 21; 42 Digest 602, 22.

The expression "prescribed" means prescribed by order of the Local Government Board.

Now Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189).

Extent of
Act.

76. This Act shall not extend to Scotland or Ireland.

Short title.

77. This Act may be cited as the Local Government Act, 1894.

PART V.

TRANSITORY PROVISIONS.

The only sections in this Part of the Act remaining unrepealed and operative are parts of ss. 81 and 82 (10 Halsbury's Statutes 824). S. 84 (*op. cit.* 825) remains unrepealed, but its effect is spent.

Existing
officers.

81.—(1) Where the powers and duties of any authority other than justices are transferred by this Act to any parish or district council, the officers of that authority shall become the officers of that council. . . .

Certain concluding words in this sub-section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

As an illustration of this sub-section, the officers of highway boards became officers of the rural district council when the latter became the highway authority under s. 25, *ante*, p. 4905. In a highway parish the body appointing a surveyor were the inhabitants in vestry, or meeting in the nature of a vestry (Highway Act, 1835, ss. 6, 18 (9 Halsbury's Statutes 52, 57)).

This sub-section did not prevent a council distributing the work as it liked amongst all its various officers, whether appointed by or transferred to it (*Genn v. East Kerrier R. D. C.* (1898), 62 J. P. 215; 33 Digest 100, 680).

As to the transfer of officers of rural district councils consequent upon the provisions of Pt. III. of the L. G. A., 1929, see s. 120, Vol. V., *post*.

**Note to
Section 81.**

Sub-s. (2) (10 Halsbury's Statutes 824) was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

Sub-s. (3) relates to officers now obsolete.

(4) Every such officer, *vestry clerk, and assistant overseer*, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

The expression "salary or remuneration" apparently means "remuneration whether by salary or by fees." See *Wyatt v. London C. C.* (1901), 66 J. P. 325; 85 L. T. 629; 33 Digest 380, 894. And see generally notes to L. G. A., 1933, s. 105, *ante*, pp. 874 *et seq.*

[Sub-ss. (5), (6) (10 Halsbury's Statutes 824), repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

(7) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. . . .

The concluding part of sub-s. (7) was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

Section 120 of the L. G. A., 1888, was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1276. In so far as any outstanding cases under the section in the text still exist, however, the repealed section continues to apply to them, and for this purpose provides as follows:—

Compensation to existing officers: incorporated provisions of L. G. A., 1888, s. 120.

"(1) Every existing officer declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to her Majesty's Civil Service, is paid to a person on abolition of office.

**Note to
Section 81.**

- “(2) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declaration Act, 1835, that the same is a true statement according to the best of his knowledge, information, and belief.
- “(3) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.
- “(4) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months after the decision of the council, appeal to the Treasury, who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.
- “(5) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath, which any justice present may administer, all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.
- “(6) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.
- “(7) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.
- “(8) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes.”

It will be observed that, under the section above set out, in fixing the amount of compensation, regard must be had to broadly the same considerations as under s. 150 and Sched. IV. of the L. G. A., 1933. See those provisions at *ante*, pp. 958, 1248.

It has been suggested that sub-s. (7) applies only to the case where an officer is appointed to an office under an authority of the same kind as that in which he was formerly employed. To provide for this the M. of H., in their orders extending boroughs, insert words to meet the case of an officer receiving an appointment under a different kind of authority.

The following is the text of the compensation clause inserted in an Order dated shortly before the L. G. A., 1929, Vol. V., *post* :—

“Every officer in office on the passing of the Act of Parliament confirming this Order who by virtue of this Order or of anything done in pursuance or in consequence thereof suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees salary or emoluments (and for whose compensation no other provision

is made by any enactment for the time being in force) shall be entitled to compensation for that loss from the Corporation.

Note to
Section 81.

"If the services of any officer are dispensed with or his fees salary or emoluments are reduced within five years after the appointed day because his services are not required or his duties are diminished in consequence of this Order and not on the ground of misconduct that officer shall be deemed unless the contrary is shown to have suffered a direct pecuniary loss in consequence of this Order.

"In determining the compensation payable to any person who becomes entitled to compensation in pursuance of this Order regard shall be had to the conditions and circumstances mentioned in subsection (1) of section 120 of the Act of 1888 and the compensation shall not exceed the limit therein mentioned.

"Any compensation payable under this Order to any officer shall be paid out of the borough fund and borough rate of the Borough and the provisions of section 120 of the Act of 1888 shall apply subject to the following and any necessary modifications :—

- "(a) Any reference in that section to the county council shall be construed as a reference to the Corporation and in subsection (7) of that section for the words 'the same or any other county council' there shall be substituted the words 'the council of any county or county borough or under any district council' ;
- "(b) References in that section to 'the passing of this Act' shall be construed as references to the date on which the abolition of office takes effect or the direct pecuniary loss commences as the case may be ; and
- "(c) The expression in subsection (1) of that section 'the Acts and rules relating to Her Majesty's Civil Service' shall mean the Acts and rules relating to Her Majesty's Civil Service which were in operation at the date of the passing of the Act of 1888.

"All fees or remuneration received and retained by an officer in connection with the preparation of the jurors book or the register of electors under the Representation of the People Acts 1918 to 1926 shall subject to a reasonable deduction for any expenses incurred by the officer be regarded as part of the emoluments of the officer for the purpose of compensation.

"The compensation payable under this Order to an officer who on the passing of the Act of Parliament confirming this Order shall hold two or more offices under any local authority or local authorities and who shall have devoted the whole of his time to the duties of such offices shall not be reduced by reason of the fact that he has devoted only part of his time to each of such offices and for the purpose of this paragraph of this article a superintendent registrar of births and deaths or registrar of marriages shall be deemed to hold an office under a local authority.

"If any officer was temporarily absent from his employment during the war whilst serving in His Majesty's Forces or the Forces of the Allied or Associated Powers either compulsorily or with the sanction or permission of the local authority such period of temporary absence shall be reckoned as service under the local authority in whose employment he was immediately before and after such temporary absence :

"Provided that in the case of an officer who after the Armistice voluntarily extended his term of service with the Forces no period of absence during such extension shall be so reckoned.

"The Corporation may in their discretion and in consideration of the fact that any officer was appointed to his office as a specially qualified person or of the fact that he had prior to his appointment served as a deputy assistant or clerk to any officer not holding a temporary appointment add any number of years (not exceeding ten) to the number of years which such officer would otherwise be entitled to reckon for the purpose of computing the compensation to which he would be entitled under the Acts and rules relating to Her Majesty's Civil Service as applied by this Order.

"No officer shall be entitled to receive both compensation under this Order for pecuniary loss and a superannuation or retiring allowance in respect of the same period of service and the same pecuniary loss."

In local Acts it is the practice to substitute the M. of H. for the Treasury as the appellate authority ; this substitution is held to be beyond the powers of the Minister in a Provisional Order.

It should be noticed that not only is the decision of the Treasury final, but the

**Note to
Section 81.**
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appeal to the Treasury is the only means by which a claim for compensation can be enforced. An action does not lie to recover compensation (*Rowse v. Metropolitan Water Board*, *ante*, p. 1254. And see also *Yorke v. R.*, [1915] 1 K. B. 852; 84 L. J. K. B. 947).

An officer means a person holding "any place, situation, or employment," and "existing" means existing at the appointed day (see L. G. A., 1888, s. 100, *ante*, p. 4765, and s. 75 (1) of this Act, *ante*, p. 4920).

82. . . .

83. . . .

The operation of these two sections are now spent, and the latter was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

84. . . .

Sub-sections (1) and (2) (10 Halsbury's Statutes 825), as to the first elections under the Act, were repealed as spent by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

The remainder of the section is now also omitted as spent.

[Ss. 85—89 (10 Halsbury's Statutes 825—827) were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.]

SCHEDULES.

FIRST SCHEDULE.

This Schedule was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1286.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Section 89.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
54 Geo. 3, c. 91 . . .	<i>An Act to amend so much of an Act passed in the forty-third year of Her late Majesty Queen Elizabeth, as concerns the time for appointing overseers of the poor.</i>	<i>The whole Act, so far as it relates to rural parishes.</i>
58 Geo. 3, c. 69 . . .	<i>The Vestries Act, 1818 .</i>	<i>Sections one, two, three, and four, so far as they relate to parish meetings and parish councils under this Act.</i>
59 Geo. 3, c. 85 . . .	<i>The Vestries Act, 1819 .</i>	<i>The whole Act, so far as it relates to parish meetings under this Act.</i>
1 & 2 Will. 4, c. 60 . .	<i>The Vestries Act, 1831 .</i>	<i>The whole Act, so far as it relates to parish meetings under this Act, except section thirty-nine.</i>

Schedule 2.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
4 & 5 Will. 4, c. 76 .	<i>The Poor Law Amendment Act, 1834.</i>	<p>In section thirty-eight, the words "and the said guardians shall be elected by the ratepayers and by such owners of property in the parishes forming such union as shall in manner herein-after mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively"; and from "and also fix a qualification" to "for the ensuing year shall be chosen"; and from "and every justice of the peace" to "as such elected guardians"; and from "Provided also" to the end of the section.</p> <p>Section thirty-nine, from "and every justice" to the end of the section.</p> <p>In section forty, the words "In all cases of the election of guardians under this Act or."</p> <p>Section forty-one.</p> <p>Section forty-eight from "Provided always" to the end of the section, so far as the words repealed relate to the office of parish or district councillor or guardian.</p>
5 & 6 Will. 4, c. 50 .	<i>The Highway Act, 1835 .</i>	<p>In section forty-eight, the words "with the consent in writing of the justices of the peace at a special sessions for the highways" and the words "at and for such price as the said justices may deem fair and reasonable."</p>
7 Will. 4 & 1 Vict. c. 45	<i>The Parish Notices Act, 1837.</i>	<p>Section three, so far as it relates to notices by parish councils and notices of parish meetings under this Act.</p>
5 & 6 Vict. c. 57 .	<i>The Poor Law Amendment Act, 1842.</i>	<p>Section eight, section eleven, from "and in every case," to the end of the section, and section fifteen.</p>
7 & 8 Vict. c. 101 .	<i>The Poor Law Amendment Act, 1844.</i>	<p>Sections seventeen, twenty, and twenty-four, and section sixty-one from "and wherever any such collector" to "provisions of this Act."</p>
13 & 14 Vict. c. 57 .	<i>The Vestries Act, 1850 .</i>	<p>Sections six, seven, eight, and nine, so far as they relate to parish meetings under this Act.</p>
14 & 15 Vict. c. 105 .	<i>The Poor Law Amendment Act, 1851.</i>	<p>Section two and section three.</p>
16 & 17 Vict. c. 65 .	<i>The Vestries Act, 1853 .</i>	<p>The whole Act, so far as it relates to parish meetings under this Act.</p>
18 & 19 Vict. c. 120 .	<i>The Metropolis Management Act, 1855.</i>	<p>Section six.</p> <p>Sections thirteen to twenty-seven.</p> <p>In section thirty the words "or custom."</p> <p>Section fifty-four.</p> <p>In section two hundred and thirty-five the words "under this Act," where they secondly occur.</p>
19 & 20 Vict. c. 112 .	<i>The Metropolis Management Amendment Act, 1856.</i>	<p>Sections six, seven, and eight.</p>

Schedule 2.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
23 & 24 Vict. c. 30 .	<i>The Public Improvements Act, 1860.</i>	<i>In section four the words "in value."</i>
25 & 26 Vict. c. 102 .	<i>The Metropolis Management Amendment Act, 1862.</i>	<i>Section thirty-six; and section forty from "by rating" to "of such parish."</i>
25 & 26 Vict. c. 103 .	<i>The Union Assessment Act, 1862.</i>	<i>In section two, the words "consisting partly of ex-officio and partly of elected guardians," and from "Provided always" to the end of the section. In section five, the words "ex-officio or elected," in both places where they occur, and the words "as the case may be."</i>
30 & 31 Vict. c. 6 .	<i>The Metropolitan Poor Act, 1867.</i>	<i>Section seventy-nine</i>
30 & 31 Vict. c. 106 .	<i>The Poor Law Amendment Act, 1867.</i>	<i>Sections four, five, six, and nine, section ten so far as it relates to elections of guardians, and section twelve.</i>
31 & 32 Vict. c. 122 .	<i>The Poor Law Amendment Act, 1868.</i>	<i>Section four, from "and the powers" to the end of the section.</i>
38 & 39 Vict. c. 55 .	<i>The Public Health Act, 1875.</i>	<i>Section eight from "and the number" to the end of the section. In section nine, from "Provided that (1) An ex-officio guardian" to "situated in an urban district" (being the provisoes); and the words "from owners or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for a union," and from "Subject to the provisions of this Act" to the end of the section. Section two hundred, except so far as it applies to boroughs; sections two hundred and one and two hundred and four, section two hundred and forty-eight, except so far as it relates to overseers, and section three hundred and twelve. So much of Schedule I. as relates to committees, and Schedule II.</i>
39 & 40 Vict. c. 61 .	<i>The Divided Parishes and Poor Law Amendment Act, 1876.</i>	<i>Section six, from "The meeting of inhabitants" to the end of the section, so far as it relates to rural parishes. Section eight to "no alteration," except as to cases where a parish is dealt with by order of the Local Government Board.</i>
39 & 40 Vict. c. 79 .	<i>The Elementary Education Act, 1876.</i>	<i>In section seven the words "so however that in the case of a committee appointed by guardians one third at least shall consist of ex-officio guardians, if there are any, and sufficient ex-officio guardians."</i>
47 & 48 Vict. c. 70 .	<i>The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.</i>	<i>Section thirty-six, from "(h.) The Local Government Board" to "validity of any vote."</i>
48 & 49 Vict. c. 53 .	<i>The Public Health (Members and Officers) Act, 1885.</i>	<i>Sections three and four.</i>
55 & 56 Vict. c. 53 .	<i>The Public Libraries Act, 1892</i>	<i>Sub-section three of section one. The First Schedule so far as it applies to rural parishes.</i>

THE PUBLIC WORKS LOANS ACT, 1894.

(57 & 58 VICT. c. 11) (a).

An Act to grant Money for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [18th June, 1894.]

* * * * *

3. In the First Schedule to the Public Works Loans Act, 1875 (specifying the works for the purpose of which the Public Works Loan Commissioners may lend money), the expression "main drainage" shall be construed as including works or underground drainage.

Explanation of Schedule 1, 38 & 39 Vict. c. 89.

(a) This Act amends the Public Works Loans Act, 1875, Schedule I., *ante*, p. 4560.

* * * * *

5. This Act may be cited as "The Public Works Loans Act, 1894."

Short title.

* * * * *

THE MERCHANT SHIPPING ACT, 1894.

(57 & 58 VICT. c. 60.)

An Act to consolidate Enactments relating to Merchant Shipping.

[25th August, 1894.]

* * * * *

PART II.

MASTERS AND SEAMEN.

* * * * *

Protection of seamen from Imposition.

214.—(1) A local authority hereinafter mentioned (b) whose district (b) includes a seaport may, with the approval of the Board of Trade, make byelaws relating to seamen's lodging-houses in their district, and those byelaws shall be binding upon all persons keeping houses in which seamen (c) are lodged and upon the owners thereof and persons employed therein.

Seamen's lodging-houses (a).

(2) The byelaws shall amongst other things provide for the licensing, inspection, and sanitary conditions of seamen's lodging-houses, for the publication of the fact of a house being licensed, for the due execution of the byelaws, for preventing the obstruction of persons engaged in securing that execution, for the preventing of persons not duly licensed holding themselves out as keeping or purporting to keep licensed houses, and for the exclusion from licensed houses of persons of improper character, and shall impose sufficient fines not exceeding fifty pounds for the breach of any byelaw (d).

(3) The byelaws shall come into force from a date therein named, and shall be published in the London Gazette (e) and in one newspaper at the least circulating in the district, and designated by the Board of Trade.

(4) If the local authority do not within a time in each case named by the Board of Trade make, revoke, or alter, any byelaws under this section. the Board of Trade may do so (f).

Note to
Section 214.

(5) Whenever her Majesty in Council orders (g) that in any district or any part thereof none but persons duly licensed in pursuance of byelaws under this section shall keep seamen's lodging-houses or let lodgings to seamen from a date therein named, a person acting in contravention of that order shall for each offence be liable to a fine not exceeding one hundred pounds (h).

(6) A local authority may defray all expenses incurred in the execution of this section out of any funds at their disposal as sanitary authority (i), and fines recovered for a contravention of this section or of any byelaw under this section shall be paid to such authority and added to those funds.

(7) In this section the expression "local authority" means in the administrative county of London the county council, and elsewhere in England the local authority under the Public Health Acts (k) . . . and the expression "district" means the area under the authority of such local authority.

(a) This section takes the place of s. 48 of the Merchant Shipping (Fishing Boats) Act, 1883, now repealed by this Act.

(b) See sub-s. (7).

(c) Defined by s. 742, *post*, p. 4934.

(d) By s. 680 (2) (18 Halsbury's Statutes 393) of this Act, any offence committed or fine recoverable under a byelaw made in pursuance of this Act may be prosecuted or recovered in the same manner as an offence or fine under this Act. By s. 680 (1) (b) an offence under this Act, punishable by a fine not exceeding £100, shall be prosecuted summarily in manner provided by the Summary Jurisdiction Acts. Section 682 (*op. cit.* 393) gives an appeal to quarter sessions in case the fine inflicted exceeds five pounds; s. 683 (*op. cit.* 394) limits the time for commencing proceedings to within six months after the commission of the offence; s. 684 (18 Halsbury's Statutes 394) gives jurisdiction not only in the place where the offence was actually committed, but also in any place where the offender may happen to be. Sub-section (6) of the present section deals with the application of fines recovered.

(e) See s. 740, *post*, p. 4934.

(f) This power has not yet been exercised, nor has there been any exercise of the corresponding power under the repealed statute.

(g) No such Order in Council has yet been made, either under the present Act, or under the corresponding provision in the repealed statute.

Section 738 of this Act (*op. cit.* 410) gives power to revoke, alter, or add to any Order in Council, when made, and provides for the publication of Orders in Council in the London Gazette, for laying them before Parliament, and for their taking effect.

(h) As to recovery of such fine, see ss. 680—684 of the Act (*op. cit.* 393—394), and as to its application, when recovered, see ss. 699, 716 (*op. cit.* 401, 402).

(i) As to these funds, in the case of an urban sanitary authority, see ss. 185, 188, 191 of the L. G. A., 1933, *ante*, pp. 1013, 1015, 1019. In a rural district it is not clear whether it is intended that the expenses shall be general or special, *i.e.*, chargeable only to the contributory place comprising the town. See s. 308 of the P. H. A., 1936, *ante*, p. 654.

(k) Formerly this obviously meant under the P. H. A., 1875, *ante*, p. 4331, and amending Acts. See the Short Titles Act, 1896 (18 Halsbury's Statutes 1021).

Words relating to Scotland and Ireland only are here omitted.

* * * * *

PART III.

PASSENGER AND EMIGRANT SHIPS.

* * * * *

3. EMIGRANT SHIPS.

Passage Brokers (a).

341.—(1) Any person who sells or lets or agrees to sell or let, or is in anywise concerned in the sale or letting of steerage passages (b) in any ship proceeding from the British Islands to any place out of Europe not within the Mediterranean Sea shall for the purposes of this Part of this Act be a passage broker.

(2) The acts and defaults of any person acting under the authority, or as an agent, of a passage broker, shall for the purposes of this Act, be deemed to be also the acts and defaults of the passage broker.

(a) The sections under this heading take the place of ss. 66—69 (18 Halsbury's Statutes 188, 189), inclusive, and 81 of the Passengers Act, 1855, now repealed by this Act.

By s. 23 of the Merchant Shipping Act, 1906 (*op. cit.* 452), the provisions of Part III. of the principal Act (*i.e.*, this Act) relating to passage brokers shall apply to any person who at any place in the British Isles sells or lets or agrees to sell or let or is anywise concerned in the sale or letting of steerage passages from any place in Europe not within the Mediterranean Sea.

(b) Defined by s. 268 (*op. cit.* 260). The selling or letting intended by this section is a selling or letting in a named ship of a passage to commence at a definite time for a specified voyage, and therefore that a person who agrees to procure a passage for another, no ship or time being specified, has not acted as a passage broker (*Morris v. Horden*, [1897] 1 Q. B. 378; 61 J. P. 246; 41 Digest 672, 5037).

Note to Section 341.

342.—(1) A person shall not act directly or indirectly as a passage broker unless he— Passage brokers to enter into bond and obtain licence.

(a) has entered, with two good and sufficient sureties approved by the emigration officer nearest to his place of business, into a joint and several bond (a) to the Crown, in the sum of one thousand pounds; and

(b) holds a licence for the time being in force to act as passage broker.

(2) The bond shall be renewed on each occasion of obtaining a licence, and shall not be liable to stamp duty; it shall be executed in duplicate, and one part shall be deposited at the office of the Board of Trade, and the other part with the said emigration officer.

(3) The emigration officer may, in lieu of two securities, accept the bond of any guarantee society approved by the Treasury.

(4) There shall be exempted from this section—

(a) the Board of Trade, and any person contracting with them or acting under their authority; and

(b) any passage broker's agent duly appointed under this Act (b).

(5) If any person fails (c) to comply with any requirement of this section, he shall for each offence be liable to a fine not exceeding fifty pounds (d).

(a) The form of bond is prescribed by s. 360 and Schedule XIV., *post*, pp. 4933, 4935.

(b) A passage broker's agent, in order to be duly appointed under this Act, must, under s. 345 (18 Halsbury's Statutes 290), hold an appointment in writing from the passage broker, in the form required by the Act, and countersigned by the emigration officer at the port nearest to the place of business of the passage broker.

(c) Includes refusal; see s. 742, *post*, p. 4934.

(d) This fine cannot be sued for and recovered by the licensing authority, but only by the persons authorised under s. 356, *post*, p. 4933.

343.—(1) Application for a licence to act as passage broker shall be made to the licensing authority for the place in which the applicant has his place of business. Granting of licences to passage brokers.

(2) The licensing authority, upon the applicant proving to their satisfaction that he—

(a) has entered into and deposited one part of such bond as is required by this Act; and

(b) has given to the Board of Trade at least fourteen days' clear notice (a) of his intention to apply for a licence, may grant the licence (a), and shall forthwith send to the Board of Trade notice (a) of such grant.

(3) The licensing authority shall be—

(a) in the administrative county of London the justices of the peace at petty sessions;

(b) elsewhere in England, the council of a county borough or county district (b); . . .

**Note to
Section 343.**

(a) A form is prescribed by s. 360 and Schedule XIV, *post*, pp. 4933, 4935.

(b) Under the repealed statutes it was the justices in petty sessions who were the licensing authority, but their powers were transferred to district councils by ss. 27 and 32 of the L. G. A., 1894, *ante*, pp. 4911, 4912.

The remainder of this section relates to Scotland and Ireland only, and is, therefore, omitted.

**Forfeiture of
licence.**

344.—(1) A passage broker's licence shall, unless forfeited, remain in force until the thirty-first day of December in the year in which it is granted, and for thirty-one days afterwards.

(2) Any Court (a), when convicting a passage broker of an offence under this Part of this Act or of any breach or non-performance of the requirements thereof, may order that his licence be forfeited and the same shall be forfeited accordingly.

(3) The Court shall forthwith send to the Board of Trade a notice of any such order.

(a) Defined by s. 742, *post*, p. 4934.

345. [*Passage broker's agents.*]

346. [*List of agents and runners to be exhibited by brokers, and sent to emigration officers.*]

Emigrant Runners (a).

**Emigrant
runner.**

347. If any person other than a licensed passage broker or his *bonâ fide* salaried clerk, in or within five miles of the outer boundaries of any port (b), for hire or reward or the expectation thereof directly or indirectly conducts, solicits, influences, or recommends any intending emigrant (c) to or on behalf of any passage broker, or any owner charterer or master (b) of a ship, or any keeper of a lodging-house tavern or shop, or any money changer or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or gives or pretends to give to any intending emigrant any information or assistance in any way relating to emigration, that person shall for the purposes of this Part of this Act be an emigrant runner.

(a) The sections under this heading take the place of ss. 75—79, inclusive, and 80 of the Passengers Act, 1855, now repealed by this Act.

(b) Defined by s. 742, *post*, p. 4934.

(c) This word is not defined by the Act, and so probably would include any person proposing to take a steerage passage on board an emigrant ship as defined by s. 268 (18 Halsbury's Statutes 260).

**Emigrant
runner's licence.**

348.—(1) The licensing authority (a) for passage brokers for the place in which a person wishes to act as an emigrant runner, and to carry on his business, may, upon his application and on the recommendation in writing of an emigration officer, or of the chief constable or other head officer of police in such place (but not otherwise), grant, if they think fit, to the applicant a licence to act as emigrant runner.

(2) The emigrant runner shall, within forty-eight hours after his licence is granted, lodge the same with the nearest emigration officer, and that officer shall—

(a) register the name and abode of the emigrant runner in a book to be kept for the purpose, and number each name in arithmetical order; and

(b) upon receipt of a fee, not exceeding seven shillings, supply to the emigrant runner a badge of such form and description as the Board of Trade approve,

but in case of a renewed licence, the officer need only note the renewal and its date in his registry book against the original entry of the emigrant runner's name.

(3) An emigrant runner's licence shall remain in force until the thirty-first day of December in the year in which it is granted, unless sooner revoked by any justice for any offence against this Act or for any other misconduct committed by the holder of such licence, or unless forfeited under the provisions hereinafter contained (b). Section 348.

(4) When an emigrant runner changes his abode, the emigration officer shall register the change in his registry book.

(a) See s. 343, *ante*, p. 4931.

(b) In s. 351 (18 Halsbury's Statutes 291). These provisions, however, do not concern the licensing authority.

349. [*Renewal of badge.*]

350.—(1) A person shall not—

- (a) act as an emigrant runner without being duly licensed and registered ; or
- (b) retain or use any emigrant runner's badge not issued to him in manner by this Act required ; or
- (c) counterfeit or forge any emigrant runner's badge ; or
- (d) employ as an emigrant runner any person not duly licensed and registered.

Penalties on persons acting without licence or badge, using badge not lawfully issued, or employing unlicensed person.

(2) If any person acts in contravention of this section, he shall for each offence be liable to a fine not exceeding five pounds (a).

(a) This fine cannot be sued for and recovered by the licensing authority, but only by the persons authorised under s. 356, *infra*.

351. [*Penalties on emigrant runners for certain acts of misconduct.*]

352. [*Emigrant runner's commission and fees.*]

* * * * *

Legal Proceedings (a).

356. All fines and forfeitures under the provisions of this Part of the Act (other than the provisions relating to passenger steamers only) shall be sued for by the following officers ; that is to say, Recovery of fines.

- (a) Any emigration officer ;
- (b) Any chief officer of customs ; and also
- (c) In the British Islands, any person authorised by the Board of Trade and any officer of customs authorised by the Commissioners of Customs.

(a) The following section takes the place of s. 84 of the Passengers Act, 1855, now repealed by this Act, and is here inserted merely for the purpose of showing that the licensing authority cannot take proceedings for the recovery of fines.

* * * * *

Supplemental.

360.—(1) The forms set out in the Fourteenth Schedule to this Act or forms as near thereto as circumstances admit, shall be used in all cases to which such forms are applicable.

* * * * *

Application of Part III. as regards Emigrant Ships (a).

364. The provisions of this Part of this Act respecting emigrant ships shall apply to all voyages from the British Islands to any port out of Europe and not within the Mediterranean Sea. Application to certain voyages.

(a) The following sections are here inserted for the purpose of explaining the limits of application of the foregoing sections as to passage brokers and emigrant runners.

Section 365. 365.—(1) This Part of this Act, so far as the same is applicable, shall apply to every ship carrying steerage passengers on a colonial voyage as defined (a) by this Part of this Act, provided that the enactments thereof relating to—

Limited application of Part III. of Act to colonial voyages.

- (d) passage brokers ;
- (e) emigrant runners ;

shall not apply.

(a) By s. 270 (18 Halsbury's Statutes 261), for the purposes of this Part of this Act, a colonial voyage means a voyage from any port in a British possession, other than British India and Hong Kong, to any port whatever, where the distance between such ports exceeds 400 miles, or the duration of the voyage, as determined under this Part of this Act, exceeds three days.

* * * * *

PART XIV.

SUPPLEMENTAL.

* * * * *

Transmission and Publication of Documents.

Publication in London Gazette. 56 & 57 Vict. c. 66.

740. Where a document is required by this Act to be published in the London Gazette (a), it shall be sufficient if notice thereof is published in accordance with the Rules Publication Act, 1893 (b).

(a) See s. 214 (3), *ante*, p. 4929, as to publication of byelaws.

(b) By s. 3 (3) of that Act (18 Halsbury's Statutes 1018), where any statutory rules are required by any Act to be published or notified in the London Gazette a notice in the Gazette of the rules having been made, and of the place where copies of them can be purchased, shall be sufficient compliance with the said requirement.

* * * * *

Definitions and Provisions as to Application of Act.

Definitions.

742. In this Act, unless the context otherwise requires, the following expressions (a) have the meanings hereby assigned to them ; (that is to say,)

"Master" includes every person (except a pilot) having command or charge of any ship ;

"Seaman" includes every person (except masters, pilots and apprentices, duly indentured and registered) employed or engaged in any capacity on board any ship ;

"Court" in relation to any proceeding includes any magistrate or justice having jurisdiction in the matter to which the proceeding relates ;

"Port" includes place ;

Any reference to failure to do any act or thing shall include a reference to refusal to do that act or thing.

(a) Only those expressions are here included which occur in the foregoing sections.

* * * * *

*Repeal and Savings.***Section 745.**

745. (a)—(1) *The Acts mentioned in the Twenty-second Schedule to this Act* Repeal.
are hereby repealed to the extent specified in the third column of that schedule.

Provided that—

(a) Any Order in Council, licence, certificate, byelaw, rule, or regulation made or granted under any enactment hereby repealed shall continue in force as if it had been made or granted under this Act ;

(c) Any document referring to any Act or enactment hereby repealed shall be construed to refer to this Act, or to the corresponding enactment of this Act ;

(2) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals.

52 & 53 Vict.
c. 63.

(a) *Italicised words repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).*

746. . . .

Savings.

(2) Any local Act which repeals or affects any provisions of the Acts repealed by this Act shall have the same effect on the corresponding provisions of this Act as it had on the said provisions repealed by this Act.

Short Title and Commencement.

747. This Act may be cited as “ The Merchant Shipping Act, 1894.”

Short title.

748. [*Commencement of Act, January 1, 1895.*]

SCHEDULES.**FOURTEENTH SCHEDULE.****FORMS UNDER PART III. (PASSENGER AND EMIGRANT SHIPS.)****FORM IV.****FORM OF PASSAGE BROKER'S BOND.**

KNOW all men by these presents, that we, A. B. [*insert names and surnames in full, with occupation and address of each of the parties*], of , C. D., of, etc., and E. F., of, etc., are held and firmly bound unto our Sovereign , by the grace of God of the United Kingdom of Great Britain and Ireland , defender of the faith, in the sum of one thousand pounds of good and lawful money of Great Britain, to be paid to our said Sovereign, her [his] heirs and successors: to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, and our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of , one thousand eight hundred and : [S. 342.]

The bond is exempt from stamp duty, but must be renewed annually with the licence.

FORM OF PASSAGE BROKER'S LICENCE.

NOTE.—Each member of a firm or partnership who acts as a passage broker must have a separate licence.

FORM VI.

Sched. XIV.

FORM OF NOTICE to be given to the Board of Trade by Licensing
Authority granting a Licence.

[S. 343.]

Gentlemen,—

This is to give you notice, that the council of [or we (or I), the under-
signed] did on the day of , 18 , license *A. B.*, of [*insert the names and
surnames in full, with the address and occupation of the party*], to carry on the business
of a passage broker under the provisions of the Merchant Shipping Act, 1894.

Signatures

{ Clerk of the said council or sheriff or justices
 of the peace, or as the case may be.

Place

Date

To the Board of Trade, London.

FORM VII.

[S. 343.]

FORM OF NOTICE to be given to the Board of Trade by an applicant for a
Passage Broker's Licence.

Gentlemen,—

*I, A. B. [the names and surname in full, with the address and trade or occupation
of the party applying for a licence, must be here correctly inserted],* of , in ,
do hereby give you notice that it is my intention to apply, after the expiration of
fourteen clear days from the date of putting this notice into the post, to the council
for the city, or borough, or district of , or if in Scotland to the sheriff or
sheriff substitute of , or if in Ireland, to the justices assembled in petty
sessions to be held [*the place or district in which the party giving the notice has his place
of business, as the case may be*], for a licence to carry on the business of a passage
broker under the Merchant Shipping Act, 1894.

Signature

Date

To the Board of Trade, London.

FORM X.

[S. 343.]

FORM OF EMIGRANT RUNNER'S ANNUAL LICENCE.

*A. B. [the names and surname in full, with the address of the party applying for
the licence, must be here correctly inserted],* of , in the , having made
application in writing to the council of [or me, the sheriff, or us, the under-
signed justices of the peace assembled in petty sessions, for the of]
to grant to him a licence to enable him to be registered as an emigrant runner in
and for [*district, town, or place in which the emigrant runner is to carry on his business*],
and the said [*A. B.*] having also been recommended as a proper person to receive
such licence by an emigration officer, or by the chief constable [or other head officer
of police, as the case may be] of [*the district, town, or place in which the said A. B.
is to carry on his business*]: the said council [or I, the sheriff, or we, the under-men-
tioned justices], having no sufficient cause shown and seeing no valid reason why
the said *A. B.* should not receive such licence, do hereby grant to him this licence
for the purposes aforesaid, subject nevertheless to be revoked for misconduct on the
part of the said *A. B.*, as provided in the Merchant Shipping Act, 1894.

(Signatures, and authenticating seal.)

TWENTY-SECOND SCHEDULE (a).

(a) This schedule of Acts repealed (itself repealed by the S. L. R. A., 1908 (18 Halsbury's
Statutes 1175)) included two Acts germane to the provisions set out in the text, viz., the
Passengers Act, 1855, and the Merchant Shipping (Fishing Boats) Act, 1883.

Section 1.

THE LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895.

(58 & 59 VICT. c. 11) (a).

An Act to amend the Law relating to the Taxation of Costs under the Lands Clauses Acts. [14th May, 1895.]

Fees for taxing costs in compensation inquiries and arbitrations.

8 & 9 Vict. c. 18.

1.—(1) Where under the Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court (b), and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation (c).

31 & 32 Vict. c. 119.

32 & 33 Vict. c. 12.

(2) *Section forty-five of the Regulation of Railways Act, 1868 (d), and section one of the Lands Clauses Consolidation Act, 1869 (e), are hereby repealed.*

(a) See the Lands Clauses Consolidation Act, 1845, *ante*, p. 4104, and the Acts and enactments referred to in note (a) on that page. Italicised words in s. 1 (2) are repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

(b) See Lands Clauses Consolidation Act, 1845, s. 52, *ante*, p. 4121, which is thus extended to costs of arbitration. The decision of the master cannot be reviewed (*Sandback Charity Trustees v. North Staffordshire Rail. Co.* (1877), 3 Q. B. D. 1) (and see *Re Cannings, Ltd. and Middlesex C. C.*, [1907] 1 K. B. 51; 71 J. P. 46; Digest, Practice 947, 4871), nor can it be removed by *certiorari* (*R. v. Goff*, [1905] 2 I. R. 121; 11 Digest 201, *w*). But when the successful party has to pay the arbitrators and umpire excessive fees in order to obtain delivery of the award, he may recover back from them by action such sum as the Court thinks improperly charged, and in such action the certificate of the Taxing Master under this section is *prima facie* evidence of the unreasonableness of the fees (*Llandrindod Wells Water Co. v. Hawksley* (1904), 68 J. P. 242; 11 Digest 202, 813).

(c) See s. 213 of the Supreme Court of Judicature (Consolidation) Act, 1925 (4 Halsbury's Statutes 194), and Treasury Order, dated 14th July, 1884, made thereunder as to fees to be taken by stamps.

(d) This enactment related to the fees payable to the masters for determining questions of disputed compensation under the provisions of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4104, or of any Act incorporating, altering, or amending the same.

(e) This enactment corresponded to the first part of sub-s. (1) so far as it relates to the taxation of costs of arbitration.

Short title.

2. This Act may be cited as "The Lands Clauses (Taxation of Costs) Act, 1895."

THE LOCAL GOVERNMENT (DETERMINATION OF DIFFERENCES) ACT, 1896.

(59 & 60 VICT. c. 9.)

An Act to amend certain Provisions of the Local Government Act, 1888, with respect to the Determination of Differences by the Local Government Board. [21st May 1896.]

Amendment of 51 & 52 Vict. c. 44, s. 11, as to

1. The Local Government Act, 1888, shall have effect, as if in sub-sections three and four of section eleven (a) of that Act for the words "be determined by arbitration of the Local Government Board," and in

sub-section nine of the same section for the words "be referred to the arbitration of the Local Government Board," were substituted the words "be determined by the Local Government Board either as arbitrators or otherwise at the option of the Board," and as if in section sixty-three of that Act for the words "are required in pursuance of this Act to decide," were inserted the words "determine as arbitrators."

Section 1.

determina-
tion of
differences.

The powers conferred upon the L. G. B. by this Act and by s. 11 of the L. G. A., 1888, *ante*, p. 4726, are now vested in the Minister of Transport in pursuance of the Ministry of Transport Act, 1919, *post*, p. 5195, which vested in that Minister with a certain reservation all powers and duties of any government department in relation (*inter alia*) to roads, bridges and ferries, and vehicles and traffic thereon.

(a) S. 11 of the L. G. A., 1888, is set out at, *ante*, p. 4786. Sub-ss. (3) and (4) have been repealed by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, but sub-s. (9) is still operative as regards disputes as to whether a road has been put in proper condition before becoming a "county road." By that section, certain differences arising thereunder between a county council and a district council with reference to the maintenance, etc., of main roads and other matters connected with highway administration, might be referred to and determined by arbitration of the L. G. B. It was held in *Re Kent C. C. and Sandgate L. B.*, [1895] 2 Q. B. 43; 59 J. P. 456; 2 Digest 457, 1045, that the Board should, when a difference under the section was referred to their arbitration, have proceeded to appoint an arbitrator in accordance with the provisions of s. 63 of the Act. The effect of the amendments hereby made in s. 11 is that the central department may decide any such dispute, either as arbitrators or otherwise at their option. It will only be where it determines a dispute as arbitrators that it will be required to appoint an arbitrator under s. 63, *ante*, p. 4754. See further the notes to s. 11 (9), p. 4732, *ante*. The validation of previous orders on this subject was provided for by s. 2, *infra*.

By the London G. A., 1899, s. 7 (1) (11 Halsbury's Statutes 1229) (now repealed), where any duty was transferred from the London County Council to a borough council by or under the Act, the county council was to contribute to the borough council such amount (if any) as might be finally determined by the L. G. B. (now M. of H.). By s. 28 (3) (*op. cit.* 1239), when the L. G. B. (now the Ministry of Health) are authorised by the Act to determine any matter, they may determine it as arbitrators or otherwise. An application was made by several metropolitan borough councils to the L. G. B. to determine the amount to be contributed by the county council in respect of the maintenance of main roads which was transferred to the borough councils by s. 6 (1) of the Act (*op. cit.* 1228). The Board came to the conclusion that on equitable grounds no contribution should be made, and they therefore decided "otherwise than as arbitrators" that none should be made. On an application for a *mandamus* directing the Board to hear and determine the application according to law, the court declined to interfere (*R. v. L. G. B., Ex parte Hackney Borough Council* (1908), 72 J. P. 211; 16 Digest 309, 1212).

2. [Validation of past orders.]

Repealed as spent by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

3. This Act may be cited as the Local Government (Determination Short title. of Differences) Act, 1896.

THE PUBLIC WORKS LOANS ACT, 1896.

Section 2.

THE PUBLIC WORKS LOANS ACT, 1896.

(59 & 60 VICT. c. 42) (a).

An Act to grant moneys for the purpose of certain Local Loans, and for other purposes relating to Local Loans. [14th August, 1896.]

* * * * *

Addition to purposes for which Public Works Loan Commissioners may lend.

38 & 39 Vict. c. 89.

2. There shall be added to the works for the purpose of which the Public Works Loan Commissioners may lend in Great Britain under the Public Works Loans Act, 1875, the following works, namely,—

Any work for which the council of a county, borough, district, or parish are authorised to borrow ;

The construction or improvement of any canal ;

Provided that where the repayment of a loan for the construction or improvement of a canal is collaterally secured to the satisfaction of the Public Works Loan Commissioners, the rate of interest on the loan may be three and a quarter per cent. per annum instead of the rate of four per cent. per annum authorised by the Public Works Loans Act, 1892.

55 & 56 Vict. c. 61, s. 2.

(a) This Act, so far as material, extends the Public Works Loans Act, 1875, and First Schedule, *ante*, pp. 4544, 4560.

* * * * *

Short title.

6. This Act may be cited as “ The Public Works Loans Act, 1896.”

* * * * *

THE LOCAL GOVERNMENT (JOINT COMMITTEES) ACT, 1897.

(60 & 61 VICT. c. 40.)

An Act to amend the Local Government Act, 1894, with regard to Joint Committees for the purposes of the Burial Acts.

[6th August 1897.]

Joint committees for Burial Acts.

1.—(1) Where a joint committee is appointed under section fifty-three of the Local Government Act, 1894 (a), for the purposes of the Burial Acts, 1852 to 1885—

(a) Any expenses incurred in carrying out those purposes shall be defrayed, any money borrowed for those purposes shall be borrowed, and any receipts arising from those purposes shall be divided, by the councils appointing the committee in such proportion as they may agree upon, or, as in default of agreement, may be determined by the county council, or, if one of the councils so appointing is the council of a county borough, by the Local Government Board (b) ;

(b) The consent of the Local Government Board shall be required to the borrowing by any council of any money required to be borrowed for those purposes, but that consent shall be conclusive as to the power of the council to borrow, and no other consent shall be required either under the said Burial Acts, or the Local Government Act, 1894, or any other Act (c) ;

(c) *Part IV. of the First Schedule to the Local Government Act, 1894, Section 1. shall apply to the proceedings of the committee (d).*

(2) If any difference arises as to the constitution of any such committee it may be determined by order of the Local Government Board.

(3) For the purposes of this section references to a council shall, in the case of a parish not having a parish council, include the parish meeting, and the parish meeting shall have the same power of borrowing for the purposes of the Burial Acts as a parish council would have (e).

(a) See notes to this section, p. 4913, *ante*. Doubts had arisen as to the applicability of s. 57 of the Act of 1894 (10 Halsbury's Statutes 813) to joint committees appointed under s. 53, *ante*, p. 4913, and this Act removes difficulties as regards such joint committees when appointed for the purposes of the Burial Acts. But with regard to other joint committees (probably very few in number), those difficulties remain and can only be avoided by an alteration of areas.

(b) The determination of the county council or of the L. G. B. (now the Minister of Health), as the case may be, appears to be final. Expenses incurred in providing and laying out a burial ground for a parish and building the necessary chapels must not exceed the amount authorised by the parish meeting. See the Burial Act, 1852, s. 19 (2 Halsbury's Statutes 195), as amended by the L. G. A., 1894, s. 7 (3), *ante*, p. 4895. As explained in the note under s. 53 (2), *ante*, p. 4913, it would seem that this consent must still be obtained from the parish meeting of a parish appointing a joint committee under s. 53, *ante*, p. 4913, and that in the case of an urban district the consent of the vestry is required.

(c) Though the consent of the L. G. B. (now M. of H.) is sufficient to authorise the borrowing (thus dispensing with the necessity for such consents as those of the Treasury under s. 20 of the Burial Act, 1852 (*op. cit.* 196), or s. 1 of the Burial Act, 1862 (*op. cit.* 240), or of the county council under s. 12 of the L. G. A., 1894 (10 Halsbury's Statutes 784)), it would seem that consent by a vestry or parish meeting, as the case may be, is still required to the *expenditure*. See preceding note.

(d) This paragraph was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1287.

(e) See ss. 195, 196 of the L. G. A., 1933, *ante*, pp. 1023, 1031.

2. This Act shall be construed as one with the Local Government Act, 1894, and may be cited as the Local Government (Joint Committees) Act, 1897.

THE DISTRICT COUNCILS (WATER SUPPLY FACILITIES) ACT, 1897.

(60 & 61 VICT. C. 44) (a).

An Act for giving Facilities for a Pure Water Supply in Rural Districts.

[6th August, 1897.]

1. Where any person who is a landowner within the meaning of the Improvement of Land Act, 1864 (b) (in this Act referred to as the principal Act), contributes any money towards the expenses incurred by a district council for the purpose of supplying water to any lands of such landowner, whether together with other lands or not, the amount so contributed may, with the sanction of the Board of Agriculture (c) given under this Act, be charged on the land of the landowner so supplied with water in the same manner (d), as nearly as may be, and with the like effect as in the case of a charge under the principal Act.

Lands may be charged by owners for water supply. 27 & 28 Vict. c. 114.

(a) As to this Act and its bearing on the law of public health, see s. 116 of the P. H. A., 1936, and notes thereon at p. 356, *ante*. See also the Limited Owners' Reservoirs and

Note to
Section 1.

Water Supply Further Facilities Act, 1877, *ante*, p. 4598, and the Improvement of Land Act, 1899, s. 1 (3) (10 Halsbury's Statutes 166), as amended by Improvement of Land Act (1899) Amendment Act, 1925 (*op. cit.* 168).

(b) By s. 8 of that Act (*op. cit.* 128), "the word 'landowner' shall mean . . . as to lands in England, the person who shall be in the actual possession or receipt of the rents or profits of any land, whether of freehold, copyhold, customary, or other tenure, except where such person shall be a tenant for life or lives holding under a lease for life or lives not renewable, or shall be a tenant for years holding under a lease or an agreement for a lease for a term of years not renewable, whereof less than twenty-five years shall be unexpired at the time of making any application to the Minister of Agriculture and Fisheries, without regard to the real-amount of the interest of any person so excepted; and in the case where the person in the actual possession or receipt of the rents or profits of any land shall fall within the above exceptions, then the person who for the time being shall be in the actual receipt of the rent payable by the person so excepted, unless he shall also fall within the above exceptions, shall, jointly with the person who shall be liable to the payment thereof, be deemed for the purposes of this Act to be the owner of such lands; . . . and as to lands in any part of the United Kingdom, the word 'landowner' shall include a corporation, and also such persons as are empowered by the 23rd section hereof." This reference seems to be an obvious mistake for the 24th section (*op. cit.* 133), whereby it is provided that all husbands, guardians, committees, feoffees, trustees, executors, and administrators, shall respectively have the same rights and powers of making applications and signifying dissents and taking other proceedings under this Act as their respective wives, infants, lunatics and idiots, would have had if free from disability, or as such feoffees, trustess, executors or administrators respectively would have had if the estates or interests of which they shall be such feoffees or trustees, or which shall be vested in them as such executors or administrators, had been vested in them in their own right; but no guardian, committee, feoffee, trustee, executor or administrator, shall be in anywise compelled or obliged to signify a dissent from any application under this Act, or be in anywise responsible for the consequences of such application, or of any charge made in pursuance thereof.

(c) Now the Minister of Agriculture and Fisheries (Ministry of Agriculture and Fisheries Act, 1919; 3 Halsbury's Statutes 451).

(d) But see s. 5, *infra*.

Charge to be
in favour of
district council:

2. Where the landowner and the district council agree that the contribution shall be payable by half-yearly instalments, the charge under this Act may be granted in favour of the district council, to secure the payment to them of such contribution (a), and the sums payable in respect of the charge shall be in addition to any sums which may be payable for the water supply by way of water rate or water rent.

(a) By s. 63 of the Improvement of Land Act, 1864, every rent-charge on land by virtue of this Act may be recovered by the person or company for the time being entitled to the same as to lands in England by the same means, and with the like powers and in like manner in all respects as a rent-charge in lieu of tithes would be recoverable if charged on the same land under the Tithe Act, 1836 (19 Halsbury's Statutes 447), and the several Acts passed for amending the same, and as if such rent-charge, by virtue of this Act, were a rent-charge in lieu of tithes made payable to such person or company under the said Acts respectively.

By s. 81 of the Tithe Act, 1836 (*op. cit.* 477), a rent-charge in lieu of tithes is recoverable by distress and by s. 82 (*op. cit.*), in default of distress by delivery of the land charged in satisfaction.

A charge in favour of the district council must be registered as a local land charge under s. 15 of the Land Charges Act, 1925; Vol. V. and 1 Halsbury's Statutes, 538.

Time limit for
charge.

3. A charge under this Act shall not be made for any term exceeding twenty-five years.

Sanctioning of
charge by Board
of Agriculture (a).

4. When the supply of water to the lands of the landowner will be beneficial to persons residing or engaged in labour on such lands, the Board (a) may, if they think fit, sanction the charge, although it may not be shown that the supply of water will effect a direct yearly increase in the value of the lands or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon (b).

(a) See note (c) to s. 1, *supra*.

(b) Cf. the last clause of Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877, s. 5, *ante*, p. 4599. This section alters the application of Improvement of Land Act, 1864, s. 25 (10 Halsbury's Statutes 133), to the cases coming within its purview.

5. Where the annual sum to be made payable under a charge proposed to be granted by virtue of this Act in respect of the supply of water to any house or houses does not exceed the amount payable at the date of the charge for such water supply by way of water rate or water rent, the Board of Agriculture (a) may execute the charge upon such information as they think fit to require, and in such case the requirements of the principal Act (b) with respect to matters and proceedings previous to the execution of a charge shall not apply.

Section 5.

Power of Board of Agriculture (a) to execute charge.

(a) See note (c) to s. 1, *supra*.

(b) See Improvement of the Land Act, 1864, ss. 11—24 (10 Halsbury's Statutes 130—133) inclusive, noting that ss. 17 and 18 have been repealed by the Settled Land Act, 1882 (*op. cit.* 164), and s. 21 extended by the Improvement of Lands (Ecclesiastical Benefices) Act, 1884 (6 Halsbury's Statutes 900).

6. This Act shall not extend to Scotland or Ireland.

Extent of Act.

7. This Act may be cited as "The District Councils (Water Supply Facilities) Act, 1897," and shall be read with the Improvement of Land Act, 1864.

Short title.

THE PUBLIC WORKS LOANS ACT, 1897.

(60 & 61 VICT. c. 51) (a).

An Act to grant Moneys for the purpose of certain Local Loans, and to amend the Law respecting the Local Loans Fund and Loans made thereout, and for other purposes relating to Local Loans. [6th August, 1897.]

AMENDMENT OF ACTS.

1. The rates of interest at which loans may be made out of the Local Loans Fund on the security of local rates may be fixed by the Treasury, from time to time, having regard to the duration of the loans, and shall be such rates not less than two and three quarters per cent. per annum as in the opinion of the Treasury are sufficient to enable such loans to be made without loss to the Local Loans Fund (b).

Reduction of interest on future local loans on the security of local rates.

(a) See the Public Works Loans Act, 1875, *ante*, p. 4544.

(b) This provision supersedes the provisions of s. 243 of the P. H. A., 1875, *ante*, p. 4479, repealed by s. 12 (4), and the Second Schedule of this Act. Reference must be made to two later enactments, viz., By s. 4 of the Public Works Loans Act, 1917 (12 Halsbury's Statutes 304), it is enacted as follows: "Notwithstanding anything in any other Act the provisions of s. 1 of the Public Works Loans Act, 1897 (which relates to the rates of interest on future local loans on the security of local rates) shall apply to a loan made out of the local loans fund otherwise than on the security of local rates as they apply to a loan made out of that fund on such security, and where under any special Act any loan made out of the said fund is repayable by means of an annuity or rent-charge payable for any period the amount of the periodical payment on account of the annuity or rent-charge, and the redemption value of the loan, shall in the case of a loan made after the commencement of this Act be calculated by reference to the rate of interest payable in respect of the loan as fixed by the Treasury under the said section as amended by this section."

And by s. 4 of the Public Works Loans Act, 1918 (*op. cit.* 305), it is enacted as follows: "For the purpose of removing doubts it is hereby declared that the power of the Treasury under s. 1 of the Public Works Loans Act, 1897, as amended by s. 4 of the Public Works Loans Act, 1917, to fix rates of interest on loans made out of the local loans fund otherwise than on the security of local rates includes (subject always to the provisions of the said sections) a power to fix rates of interest differing from the rates fixed for loans made out of that fund on the security of local rates, and a power to fix different rates of interest in respect of different loans, and that in fixing the rate of interest the Treasury may take into account the nature and value of the security for the loan." See the latest scale prescribed by the Treasury (May 9th, 1939), at *ante*, p. 3211.

* * * * *

Section 3.

Abolition of
maximum of
loan.

42 & 43 Vict.
c. 77.

3. (a) *The limit imposed by section three of the Public Works Loans Act, 1879, on the amount which can be advanced by the Public Works Loan Commissioners under any one Act in any one year to one borrower shall be repealed.*

(a) Sections 3, 12 (4), and Schedule II. are repealed by the S. L. R. A., 1908 (18 Halsbury's Statutes 1175). They repealed two provisions germane to the matter in the text, viz., s. 3 of the Public Works Loans Act, 1879, and s. 243 of the P. H. A., 1875, from "at the rate of three and a half" down to "loss to the Exchequer."

* * * * *

MISCELLANEOUS.

Definitions,
repeal, con-
struction, and
short title.

12.—(1) The expression "local rate" means any rate levied or assessed the proceeds of which are applicable to public local purposes, and which is levied on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

(2) The expression "security of a local rate" includes a security guaranteed by any such local rate.

(3) This Act shall be deemed to be a special Act within the meaning of the Public Works Loans Act, 1875.

(4) [*Repeal of Acts in Second Schedule*] (a).

(5) This Act may be cited as "The Public Works Loans Act, 1897."

(a) See note (a) to s. 3, *supra*.

38 & 39 Vict.
c. 89.

THE LOCOMOTIVES ACT, 1898.

(61 & 62 VICT. c. 29.)

An Act to amend the Law with respect to the use of Locomotives on Highways, and with respect to Extraordinary Traffic. [2nd August 1898.]

This Act was originally inserted here as amending the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 4602. See also the Locomotives on Highways Act, 1896 (19 Halsbury's Statutes 64). The whole of the sections of the Act have now been repealed, but ss. 7, 8, 14, 15, 17, 19 and 20, *post*, only from the date to be fixed for the coming into operation of s. 25 of the Road Traffic Act, 1930 (23 Halsbury's Statutes 629), which itself has been repealed and replaced by s. 30 of the Road and Rail Traffic Act, 1933 (26 Halsbury's Statutes 870) (see ss. 122, 123 (2), Sched. V., of the Act of 1930 (23 Halsbury's Statutes 687, 688, 696) and s. 48, Sched. III. of the Act of 1933 (26 Halsbury's Statutes 912, 916)). Since, at the date of writing, no date has yet been fixed for the coming into operation of the new section, the seven sections above specified of this Act are still in force and are set out accordingly.

* * * * *

Appeal against
restrictions on
passing over
bridges.

24 & 25 Vict.
c. 70.

7.—(1) Where the owner of a locomotive is aggrieved by any restriction or prohibition placed, either before or after the passing of this Act, on the passing of locomotives over any bridge (a), either under section six of the Locomotive Act, 1861 (b), or under any byelaw made under this Act, or any enactment repealed by this Act, that owner may appeal to the [Minister of Transport] (c), and that [Minister], [if] he consider that the bridge is sufficient to bear the weight of locomotives, and that there is no other reasonable cause for imposing the restriction or prohibition, may order the restriction or prohibition to be removed, or, if [he] consider that it may reasonably be varied in any respect, to be varied.

Section 7.

(2) The authority by whom a restriction or prohibition has been imposed shall comply within a time to be specified in the order with any order of the [Minister of Transport] (c) made under this section.

(3) The [Minister of Transport] (c) may determine any appeal under this section either as arbitrator or otherwise at [his] option, and, where [he] determine[s] any such appeal as arbitrators, section sixty-three of the Local Government Act, 1888, as amended by the Local Government (Determination of Differences) Act, 1896 (d), shall apply for the purpose. 51 & 52 Vict.
c. 41.
59 & 60 Vict.
c. 9.

(4) An order of the [Minister of Transport] (c) under this section with regard to any bridge shall not prevent the imposition of any restriction or prohibition with regard to the bridge at a future time, if the authority having power to impose the restriction or prohibition consider that it is necessary to do so, having regard to any change in the circumstances of the bridge or the traffic, but the imposition of any such restriction or prohibition shall be subject to appeal under this section.

(5) The [Minister of Transport] (c) may refuse to consider any appeal under this section with regard to any bridge if the question raised by the appeal has been already considered by [him] either on the confirmation of a byelaw or under a former appeal.

(6) *In the case of any bridge which a railway company is liable to repair, the Board of Trade (c) shall be substituted for the Local Government Board (c), and this section shall be read and construed accordingly.*

(a) The Menai Bridge was excepted by s. 16 (19 Halsbury's Statutes 73) (now repealed). As to light locomotives on the Menai Bridge, see the Light Locomotives (Menai Bridge) Order, 1897 (Stat. R. & O., 1897, p. 452). The Act does not expressly apply to a "culvert," though it is sometimes difficult to distinguish between a bridge and a culvert.

(b) Section 6 of the Locomotive Act, 1861 (19 Halsbury's Statutes 56) (to which the same remarks as those in the headnote to this Act apply), prohibits the owner or driver of a locomotive from driving it over a suspension bridge, or over any bridge on which a conspicuous notice has been placed by the authority of the surveyor or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road, or the bridgemaster in charge of the bridge, or of the persons liable to the repair of the bridge. As to the extent of the liability of a canal company at the present day in respect to a bridge built many years ago, see *Sharpness New Docks and Gloucester and Birmingham Navigation Co. v. Att.-Gen.*, [1915] A. C. 654; 79 J. P. 305; 26 Digest 581, 2716; and as to a railway company, see *Att.-Gen. v. G. N. Rail. Co.*, [1916] 2 A. C. 356; 80 J. P. 337; 26 Digest 582, 2719; *Lloyd v. Ross*, [1913] 2 K. B. 332; 77 J. P. 341; and as to a liability to maintain under a local Act, see *Manchester Corporation v. Audenshaw U. D. C.*, [1928] Ch. 763; 92 J. P. 163; Digest Supp. See also the Bridges Act, 1929, *post*.

(c) The Local Government Board was superseded by the Minister of Health, but the powers of that Minister in relation to bridges have now passed to the Minister of Transport (Ministry of Transport Act, 1919, and the Orders in Council made thereunder). See now also the right of appeal as to bridges given by s. 11 of the Ministry of Transport Act, 1915, *post*, p. 5204. The powers of the Board of Trade in relation to bridges have also now passed to the Minister of Transport (Ministry of Transport Act, 1919, and the Orders in Council made thereunder).

(d) *Ante*, pp. 4754, 4938.

8. No locomotive shall be taken across any bridge so as to meet or pass any other locomotive upon such bridge, and any person who acts in contravention of this section shall be subject, on summary conviction, to a penalty not exceeding five pounds for every offence. Locomotives
not to meet on a
bridge.

* * * * *

14. For the purposes of this Act the council of a county or borough may act through their surveyor or other authorized officer. Action of
county councils.

15.—(1) The [Minister of Transport] (a) may direct any inquiries to be held by [his] inspectors which [he] may deem necessary in regard to the exercise of any of [his] powers under this Act, and the [Minister] and [his] Inquiries by
inspectors of
[Minister of
Transport] (a).

Section 15. inspectors shall for the purposes of any such inquiry have the same powers as they respectively have for the purpose of an inquiry under the Public Health Act, 1875 (b).

(2) The expenses incurred by the [Minister of Transport] (a) in respect of inquiries under this Act shall be paid by such authorities and persons, and out of such funds and rates as the [Minister] may by order direct, and the [Minister] may certify the amount of the expenses so incurred, and any sum so certified and directed by the [Minister] to be paid by any authority or person shall be a debt from that authority or person to the Crown (c).

(3) Such expenses may include the salary of any inspector or officer of the [Ministry] engaged in the inquiry, not exceeding three guineas a day.

(a) See note (c) to s. 7, *ante*, p. 4945.

(b) *I.e.*, under s. 296 of that Act (13 Halsbury's Statutes 749). But since that section is repealed and replaced by s. 290 of the L. G. A., 1933, *ante*, p. 1170, the reference is now to the latter section (see notes, *ante*, pp. 724, 1195).

(c) Compare s. 290 (4) of the L. G. A., 1933, *ante*, p. 1173.

* * * * *

Interpretation
and saving.

17.—(1) In this Act, unless the context otherwise requires,—

The expression “county” means an administrative county, and includes a county borough;

The expressions “council of a county” and “county council” include the council of a county borough;

In the case of a county borough the expression “chairman” includes the mayor, and the expression “county fund” includes borough fund;

The expression “locomotive” means a locomotive propelled by steam or other than animal power (a);

The expression “waggon” includes any truck, cart, carriage, or other vehicle (b);

The expression “agricultural locomotive” (c) includes—

(a) any locomotive used solely for threshing, ploughing, or any other agricultural purpose; and

(b) any locomotive, the property of one or more owners or occupiers of agricultural land employed solely for the purposes of their farms, and not let out on hire.

(2) Nothing in this Act shall affect light locomotives within the meaning of the Locomotives of Highways Act, 1896 (d).

(3) The mayor, aldermen, and commons of the city of London shall have the same powers with regard to the licensing and registration of locomotives in the city of London as the council of a county have in their county, and shall apply as part of their income any fees or other money received in connection with such powers.

(a) A steam roller is a locomotive within this definition (*Waters v. Eddison Steam Rolling Co.*, [1914] 3 K. B. 818; 78 J. P. 327; 42 Digest 866, 170).

(b) A threshing machine and a straw-pressing machine were held to be waggons in *Smith & Sons v. Pickering*, [1915] 1 K. B. 326; 79 J. P. 118; 42 Digest 863, 152.

(c) This definition was repealed by s. 20 (3) and Third Schedule to the Roads Act, 1920, Vol. V., *post*. This repeal was consequent on the repeal of s. 9.

(d) This means that nothing in this Act is to affect light locomotives as distinguished from other vehicles, but it does not mean that light locomotives as far as they have characteristics in common with other vehicles (one of which is that they may cause extraordinary traffic) are not to be dealt with by the new procedure under s. 12 (1) (19 Halsbury's Statutes 72), *R. v. Judge James and Midland Rail. Co., Ex parte Bath R. D. Co.*, [1908] 1 K. B. 958; *sub nom. R. v. Bath County Court Judge and Midland Rail. Co.*, 72 J. P. 67; 26 Digest 474, 1869. And see *Frans v. Nicholl*, [1909] 1 K. B. 778; 73 J. P. 154.

* * * * *

Short title.

19. This Act may be cited as “The Locomotives Act, 1898.”

Application of
Act.

20. This Act shall not apply to Scotland or Ireland.

THE RIVERS POLLUTION PREVENTION (BORDER COUNCILS) ACT, 1898.

(61 & 62 VICT. c. 34.)

An Act to enable the County Councils on either side of the Border to act together for the Prevention of the Pollution of Rivers. [2nd August 1898.]

See the Rivers Pollution Prevention Acts, 1876 and 1893, *ante*, pp. 4581, 4872.

1. Where a river or tributary thereof is situate partly in England and partly in Scotland (a), the Local Government Board (b) for England and the Secretary for Scotland, by Provisional Order made on the application of the council of any of the counties concerned, may together constitute a joint committee or other body representing all or any of the counties through or by which such river or any specified portion or tributary thereof passes, and may confer on such committee or body all of the powers of a sanitary authority under the Rivers Pollution Prevention Act, 1876, or such of them as may be specified in the order; and the order may contain such provisions respecting the constitution and proceedings of the said committee or body as may seem proper, and may provide for the payment of the expenses of such committee or body by the counties represented by it, and for the audit of the accounts of such committee or body and their officers.

Provision for enforcement of 39 & 40 Vict. c. 75 in Border counties.

39 & 40 Vict. c. 75.

(a) As to rivers wholly in England, see L. G. A., 1888, s. 14 (2), *ante*, p. 4737.

(b) The L. G. B. has now been superseded by the Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189).

2. Section two hundred and ninety-seven of the Public Health Act, 1875 (a) (which relates to the making of Provisional Orders by the Local Government Board), shall apply for the purposes of this Act as if the same was herein re-enacted, and in terms made applicable thereto, but with the substitution for the words "Local Government Board" of the words "Local Government Board (b) for England and Secretary for Scotland."

Application of 39 & 39 Vict. c. 55, s. 297.

(a) *Ante*, p. 4507.

(b) Now Minister of Health.

3. In this Act the term "county" means, as regards England, an administrative county (a), and includes a county borough (b), and means, as regards Scotland, a county or burgh as defined by the Local Government (Scotland) Act, 1889.

Interpretation of "county." 52 & 53 Vict. c. 50.

(a) Defined by the L. G. A., 1888, s. 100, *ante*, p. 4765.

(b) See L. G. A., 1888, s. 31, *ante*, p. 4742.

4. This Act may be cited as the "Rivers Pollution Prevention (Border Councils) Act, 1898."

Section 1.

THE LIBRARIES OFFENCES ACT, 1898.

(61 & 62 VICT. c. 53) (a).

An Act to provide for the Punishment of Offences in Libraries.

[12th August, 1898.]

Short title.

1. This Act may be cited as "The Libraries Offences Act, 1898."

(a) See the Public Libraries Act, 1892, *ante*, p. 4840, and the amending Acts of 1893, *ante*, p. 4871, 1901 and 1919, *post*, pp. 4995, 5238. By s. 15 of the 1892 Act, *ante*, p. 4844, the general management, regulation, and control of libraries under that Act was vested in the library authority, but there was no power to enforce their regulations by any penalty except, perhaps, by expulsion or exclusion from the library. Actual breach of the peace in a library was, and still is, punishable in the ordinary way. A library is a public place within the meaning of s. 8 of the Licensing Act, 1902 (9 Halsbury's Statutes 967), for the purpose of s. 12 of the Licensing Act, 1872 (*op. cit.* 939), as to drunk and disorderly persons. Profane swearing, whether in a library or not, would be punishable under the Profane Oaths Act, 1745 (4 Halsbury's Statutes 350). Obscene language might be punishable in some cases under byelaws (*Mantle v. Jordan*, [1897] 1 Q. B. 248; 61 J. P. 119; 38 Digest 159, 61; *Brabham v. Wookey* (1901), 18 T. L. R. 99; 15 Digest 751, 8100; *Airton v. Scott* (1909), 73 J. P. 148; 100 L. T. 393). A library is probably not a "public place" or "place of public resort" within the meaning of the Vagrancy Act, 1824, s. 4 (12 Halsbury's Statutes 915) (as to indecent exhibitions), nor an "open and public place" within the Vagrant Act Amendment Act, 1873, s. 3 (*op. cit.* 947) (as to gaming in a public place). See *Langrish v. Archer* (1882), 10 Q. B. D. 44; 47 J. P. 295; 25 Digest 433, 312. And, of course, apart from this Act, remaining in a library after closing hours was a mere trespass, unless some unlawful purpose, sufficient to bring the case within s. 4 of the Vagrancy Act, 1824, could be proved, as to which, see *Hayes v. Stevenson* (1860), 25 J. P. 39; 3 L. T. 296; 37 Digest 364, 1660.

Penalty for offences.

2. Any person who, in any library or reading-room to which this Act applies, to the annoyance or disturbance of any person using the same,—

- (1) behaves in a disorderly manner;
- (2) uses violent, abusive, or obscene language;
- (3) bets or gambles;
- (4) or who, after proper warning, persists in remaining therein beyond

the hours fixed for the closing of such library or reading-room,
shall be liable on summary conviction to a penalty not exceeding forty shillings.

Application of Act.

56 & 57 Vict.
c. 39.
59 & 60 Vict.
c. 25.

3. This Act shall apply—

- (a) to any library (a) under the Public Libraries Act, 1892; and
- (b) to any library or reading-room maintained by a society registered under the Industrial and Provident Societies Act, 1893, or under the Friendly Societies Act, 1896, or by any registered trade union.

(a) The application of this Act is extended by the Public Libraries Act, 1901, s. 4, *post*, p. 4996, to any museum, art gallery, or school, provided under the Public Libraries Act, 1892, s. 11, *ante*, p. 4842.

Extent of Act.

4. This Act shall not apply to Scotland or Ireland.

THE ELECTRIC LIGHTING (CLAUSES) ACT, 1899.

Section 1.

(62 & 63 VICT. c. 19) (a).

An Act for incorporating in one Act certain provisions usually contained in Provisional Orders under the Acts relating to Electric Lighting.

[9th August, 1899.]

1. The provisions (b) contained in the Schedule to this Act shall be incorporated with and form part of every provisional order made by the [Minister of Transport] after the commencement of this Act under the Electric Lighting Acts, save so far as they are expressly varied or excepted by the order, and shall, subject to any such variations or exceptions, apply, so far as applicable, to the undertaking authorised by the order.

Provisions in Schedule to be incorporated in Electric Lighting Orders.

The said provisions shall also, with the necessary modifications, and in particular with the substitution of the words "special Act" for "special order," be incorporated with any special Act, save so far as they are expressly varied or excepted thereby.

The expression "Electric Lighting Acts" means in this Act the Electric Lighting Acts, 1882 and 1888, and, so far as respects Scotland, the Electric Lighting Acts, 1882 and 1888, and the Electric Lighting (Scotland) Act, 1890.

45 & 46 Vict. c. 56.

51 & 52 Vict. c. 12.

The expression "special Act" means in this Act any Act passed after the commencement of this Act authorising the supply of electricity for any public or private purposes within any area (c).

53 & 54 Vict. c. 13.

(a) See the Electric Lighting Acts, 1882 and 1888, *ante*, pp. 4642, 4700, and the Electric Lighting Act, 1909, *post*, p. 5096. See also the Electricity Supply Acts, 1919, *post*, p. 5243, 1922, 1926, 1928, Vol. V. and 7 Halsbury's Statutes 778, 792, 826; 1933, 1935 and 1936 (26, 28, 29 Halsbury's Statutes 137, 51, 133). The powers and duties of the Board of Trade under these Acts were transferred to the Minister of Transport by s. 39 of the Electricity Supply Act, 1919, *post*, p. 5265, and the Ministry of Transport (Electricity Supply) Order, 1920, as from 23rd January, 1920.

(b) See note to Electric Lighting Act, 1882, s. 6, *ante*, p. 4646.

(c) A local Act authorising the construction of a generating station was held by LORDS SUMNER and BLANESBURGH, LORD DUNEDIN dissenting, not to be a special Act within this definition (*Manchester Corporation v. Farnworth*, [1930] A. C. 171; 94 J. P. 62; Digest Supp.).

2.—(1) This Act may be cited as "The Electric Lighting (Clauses) Act" 1899." Short title, extent, and commencement.

(2) Except so far as any of the provisions contained in the Schedule to this Act are incorporated with any provisional order made by the [Minister of Transport] under the Electric Lighting Acts extending to the county of London, or with any special Acts so extending, this Act shall not apply to the county of London.

(3) This Act shall come into operation on the first day of October, one thousand eight hundred and ninety-nine.

SCHEDULE (a).

1. The provisions of this Schedule are to be read and construed subject in all respects to the provisions of the Electric Lighting Acts, and of any other Acts or parts of Acts incorporated therewith, and those Acts and parts of Acts are in this Schedule collectively referred to as "the principal Act"; and the several words, terms, and expressions to which by the principal Act meanings are assigned, shall have in this Schedule the same respective meanings, provided that in this Schedule—

Interpretation.

The expression "the special order" means any provisional order made by the [Minister of Transport] under the principal Act with which the provisions of this Schedule are incorporated and includes those provisions as so incorporated:

(a) As to the application of the Schedule to this Act to the Central Electricity Board, see the Regulations of 1927, *ante*, p. 2649.

Schedule.

The expression "energy" means electrical energy, and for the purposes of applying the provisions of the principal Act to the special order electrical energy shall be deemed to be an agency within the meaning of electricity as defined in the Electric Lighting Act, 1882 (*a*):

The expression "power" means electrical power or the rate per unit of time at which energy is supplied:

The expression "main" means any electric line which may be laid down by the undertakers in any street or public place, and through which energy may be supplied or intended to be supplied by the undertakers for the purposes of general supply:

The expression "service line" means any electric line through which energy may be supplied or intended to be supplied by the undertakers to a consumer either from any main or directly from the premises of the undertakers:

The expression "distributing main" means the portion of any main which is used for the purpose of giving origin to service lines for the purposes of general supply:

The expression "general supply" means the general supply of energy to ordinary consumers, and includes, unless otherwise specially agreed with the local authority, the general supply of energy to the public lamps, where the local authority are not themselves the undertakers, but shall not include the supply of energy to any one or more particular consumers under special agreement:

The expression "area of supply" means the area within which the undertakers are, for the time being, authorised to supply energy under the special order:

The expression "county council" means the county council of the county in which the area of supply is situated:

The expression "consumer" means any body or person supplied or entitled to be supplied with energy by the undertakers:

The expression "consumer's terminals" means the ends of the electric lines situate upon any consumer's premises and belonging to him, at which the supply of energy is delivered from the service lines:

The expression "telegraphic line," when used with respect to any telegraphic line of the Postmaster-General, has the same meaning as in the Telegraph Act, 1878 (*b*), and any such telegraphic line shall be deemed to be injuriously affected where telegraphic communication by means of that line is, whether through induction or otherwise, in any manner affected:

The expression "railway" includes any tramroad, that is to say, any tramway other than a tramway as hereinafter defined:

The expression "tramway" means any tramway laid along any street:

The expression "daily penalty" means a penalty for each day on which any offence is continued after conviction therefor (*c*):

The expression "Board of Trade regulations" means any regulations or conditions affecting the undertaking made by the [Minister of Transport] under the principal Act or the special order, for securing the safety of the public or for insuring a proper and sufficient supply of energy:

The expression "deposited map" means the map of the area of supply deposited at the [Ministry of Transport] by the undertakers together with the special order, and signed by an assistant secretary to the [Ministry of Transport]:

The expression "plan" means a plan drawn to a horizontal scale of at least one inch to eighty-eight feet, and where possible a section drawn to the same horizontal scale as the plan and to a vertical scale of at least one inch to eleven feet, or to such other scale as the [Ministry of Transport] may approve of for both plan and section, together with such detail plan and sections as may be necessary.

(a) See Electric Lighting Act, 1882, s. 32, *ante*, p. 4658.

(b) By s. 2 of the Telegraph Act, 1878 (19 Halsbury's Statutes 261), the expression "telegraphic line" means telegraphs, posts, and any work within the meaning of the Telegraph Act, 1863 (*op. cit.* 219), and also any cables, apparatus, pneumatic or other tube, pipe, or thing whatsoever used for the purpose of transmitting telegraphic messages or maintaining telegraphic communication, and includes any portion of a telegraphic line as defined by this Act. By s. 3 of the Telegraph Act, 1863 (*op. cit.*), the term "work" includes telegraphs and posts.

(c) See *Chepstow Electric Light and Power Co. v. Chepstow Gas, etc., Co., Ltd.*, [1905] 1 K. B. 198; 69 J. P. 72; 20 Digest 203, 26.

PROVISIONS AS TO UNDERTAKERS.

Schedule.

2.—(1) The undertakers shall be the authority, company, or other person named for that purpose in the special order.

Description of undertakers.

(2) If, in a case where the undertakers are not the local authority, the undertaking or any part thereof is at any time purchased by the local authority in accordance with the special order or the principal Act the local authority shall from the date on which the purchase takes effect be the undertakers in relation to the undertaking or part thereof for the purposes of the special order in lieu of the persons mentioned therein as undertakers.

3.—(1) The undertakers shall not purchase or acquire the undertaking of or associate (a) themselves with any company or person supplying energy under any licence, provisional order, or special Act, unless the undertakers are authorised by Parliament to do so (b).

Undertakers not to purchase other undertakings.

(2) If in contravention of this section the undertakers purchase or acquire any such undertaking, or associate (a) themselves with any such other company or person, the [Ministry of Transport] may, if they think fit, revoke the special order upon such terms as they think just.

AREA OF SUPPLY.

4.—(1) The area of supply shall be the area named for that purpose in the special order.

Area of supply and prohibition of supply beyond area.

(2) The undertakers shall not at any time after the commencement of the special order supply energy or (except for the purposes of that order) erect or lay down any electric lines or works beyond the area of supply otherwise than under the authority of Parliament, or under a licence granted by the [Ministry of Transport] under the principal Act (c).

(3) If the undertakers supply energy or erect or lay down electric lines or works in contravention of this section, the [Ministry of Transport] may, if they think fit, revoke the special order on such terms as they think just (d).

SECURITY AND ACCOUNTS (e).

* * * * *

APPLICATION OF MONEY AND PURCHASE OF LAND, ETC., BY LOCAL AUTHORITY.

7. Where a local authority are the undertakers the following provisions shall have effect :—

Application of money received by local authority as undertakers.

(1) All moneys received by the undertakers in respect of the undertaking except

(a) This prohibition against "association" does not prohibit undertakers from taking a supply of electricity in bulk from any company or persons authorised to give such a supply: see Electric Lighting Act, 1909, s. 20, *post*, p. 5102. But see now the provisions of the Electricity Supply Acts, 1919, *post*, p. 5243, 1922, 1926, 1928, Vol. V. and 7 Halsbury's Statutes 778, 792, 826; 1933, 1935 and 1936 (26, 28, 29 Halsbury's Statutes 137, 51, 133), as to the creation of electricity districts and the constitution of joint electricity authorities and particularly s. 19 of the 1919 Act, *post*, p. 5254, which enables undertakers to enter into agreements for mutual assistance pending the formation of joint electricity districts.

(b) See the Electric Lighting Act, 1888, s. 2, *ante*, p. 4643 and notes thereto.

(c) The prohibition does not operate merely in connection with and relation to the particular area in question, but is of universal application, so that the undertakers may be restrained by injunction from carrying on business and supplying energy in any other place whatsoever, however far removed from the area of supply, and although such business is carried on and supply furnished quite independently of any of the special statutory powers of the undertakers (*Att.-Gen. v. Metropolitan Electric Supply Co.*, [1905] 1 Ch. 757; 69 J. P. 169; 20 Digest 206, 41).

Of late years it has become a common practice to include in special Acts of local authorities a section authorising them to supply electricity in bulk to adjoining districts. As to connecting two areas of supply under the London Electric Supply Act, 1908, see *Battersea Borough Council v. County of London Electric Supply Co., Ltd.*, [1913] 2 Ch. 248; 77 J. P. 325; 20 Digest 217, 109.

(d) Energy is supplied at the point where it is consumed. See *Gas Light and Coke Co. v. South Metropolitan Gas Co.*, *ante*, p. 4447. And see note (b), *ante*, p. 4163.

(e) Clauses 5 and 6 (7 Halsbury's Statutes 708, 709) relating to security for execution of works and to audit are expressly inapplicable where the undertakers are a local authority, because the Electric Lighting Act, 1882, s. 8, and the schedule to that Act, *ante*, pp. 4648, 4660, makes special provision for the like purposes.

Schedule. (a) borrowed money, (b) money arising from the disposal of land acquired for the purposes of the special order, and (c) other capital money received by them in respect of the undertaking, shall be applied by them as follows :—

- (a) In payment of the working and establishment expenses and cost of maintenance of the undertaking, including all costs, expenses, penalties, and damages incurred or payable by the undertakers consequent upon any proceedings by or against the undertakers, their officers or servants, in relation to the undertaking ;
- (b) In payment of the interest or dividend on any mortgages, stock, or other securities granted and issued by the undertakers in respect of money borrowed for electricity purposes ;
- (c) In providing any instalments or sinking fund (a) required to be provided in respect of moneys borrowed for electricity purposes ;
- (d) In payment of all other their expenses of executing the special order not being expenses properly chargeable to capital (b) ;
- (e) In providing a reserve fund, if they think fit, by setting aside such money as they think reasonable, and investing the money and the resulting income thereof in Government securities, or in any other securities in which trustees are by law for the time being authorised to invest other than stock or securities of the undertakers, and accumulating it at compound interest until the fund so formed amounts to one-tenth of the aggregate capital expenditure on the undertaking.

The reserve fund shall be applicable to answer any deficiency at any time happening in the income of the undertakers from the undertaking, or to meet any extraordinary claim or demand at any time arising against the undertakers in respect of the undertaking, and so that if that fund is at any time reduced it may thereafter be again restored to the prescribed limit, and so on as often as the reduction happens.

[The undertakers shall apply the net surplus remaining in any year and the annual proceeds of the reserve fund when amounting to the prescribed limit—

- (a) in reduction of the charges for the supply of energy ; or
- (b) in reduction of the capital moneys borrowed for electricity purposes ; or
- (c) with the consent of the Electricity Commissioners in payment of expenses chargeable to capital ; or
- (d) in aid of the local rate :

Provided that—

(i) The amount which may be applied in aid of the local rate in any year shall not exceed one and a half per cent. of the outstanding debt of the undertaking ; and

(ii) After the thirty-first day of March nineteen hundred and thirty, no sum shall be paid in aid of the local rate unless the reserve fund amounts to more than one-twentieth of the aggregate capital expenditure on the undertaking (c)].

(a) Payments into the sinking fund may be suspended under s. 2 of Electricity (Supply) Act, 1922, whilst the expenditure of the capital monies remains unremunerative (see the section set out in Vol. V., *post*).

(b) The cost of providing a new generating engine at a cost of £20,000 is an expense properly chargeable to capital and is not authorised by this provision (*A.-G. v. Ealing Corporation*, [1924] 2 Ch. 545 ; 88 J. P. 153 ; 20 Digest 200, 15), see now the provision in (d) of the substituted words and note (c), *infra*.

(c) The words in brackets were substituted for the words :—

“The undertakers shall carry the net surplus remaining in any year and the annual proceeds of the reserve fund when amounting to the prescribed limit, to the credit of the local rate as defined by the principal Act or at their option shall apply that surplus, or any part thereof, to the improvement of the district for which they are the local authority, or in reduction of the capital moneys borrowed for electricity purposes.

“Provided always that if the surplus in any year exceed five pounds per centum per annum upon the aggregate capital expenditure on the undertaking, the undertakers shall make such a rateable reduction in the charge for the supply of energy as in their judgment will reduce the surplus to that maximum rate of profit.”

by s. 43 and Sched. V., Electricity (Supply) Act, 1926, Vol. V., *post*. The amended

Schedule.

Any deficiency of income in any year when not answered out of the reserve fund shall be charged upon and payable out of the local rate.

(2) All moneys arising from the disposal of lands acquired by the undertakers for the purposes of the special order, and all other capital moneys received by them, in respect of the undertaking, shall be applied by them as follows :—

(a) In the reduction of the capital moneys borrowed by them for electricity purposes ;

(b) In the reduction of the capital moneys borrowed by them for other than electricity purposes.

8. Where a local authority are the undertakers the following provisions shall have effect :—

Purchase and use of lands by local authority.

(1) Subject to the provisions of the special order and the principal Act the undertakers may acquire by purchase or on lease and use any lands for the purposes of the special order (a), and may also for those purposes use any other lands for the time being vested in or leased by them, but subject as to the last-mentioned lands to the approval of the [Minister of Health], and may dispose of any lands acquired by them under the provisions of this section which may not for the being be required for the purposes of the special order : Provided that the amount of land so used by them shall not at any one time exceed in the whole five acres except with the consent of the [Minister of Transport].

(2) The undertakers shall not purchase or acquire for the purposes of the special order ten or more houses which on the fifteenth day of December last before the commencement of the special order, or in the case of the transfer of an undertaking to a local authority before the date of the transfer, were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers, or except with the consent of the [Minister of Health], ten or more houses which were not so occupied on the said fifteenth day of December but have been or shall be subsequently so occupied.

(3) For the purposes of this section the expression "labouring class" means mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of thirty shillings a week, and the families of any of those persons who may be residing with them (b).

provisions will apply whether incorporated before or after the passing of the 1926 Act and are also to be substituted for provisions similar to those repealed in any special Act or Order passed or confirmed before the passing of the 1926 Act.

The new provisions enable a local authority undertaker to apply the surplus for the benefit of consumers under (a) or to meet with the consent of the Electricity Commissioners expenses properly chargeable to capital (see *A.-G. v. Ealing Corporation*, *supra*) under (c), and limits the amount which can be applied in aid of the local rate. After March 31st, 1930, no surplus may be applied in aid of the local rate until the reserve fund amounts to more than one-twentieth of the aggregate capital expenditure on the undertaking. Both before and after that date the amount of surplus which may be applied in aid of the local rate must not exceed $1\frac{1}{2}$ per cent. of the outstanding debt of the undertaking.

(a) It is *ultra vires* for the local authority having acquired land for these purposes to use them for any other though within their statutory powers under other Acts, as, for instance, to use lands acquired for the purposes of the special order as a site for a refuse destructor although connected in such a way with the generating station that the refuse could be used as fuel for the purpose of generating electrical energy (*Att.-Gen. v. Pontypridd U. C.*, [1906] 2 Ch. 257; 70 J. P. 394; 20 Digest 200, 13). And see *Att.-Gen. v. Bradford Corporation* (1911), 75 J. P. 553; 55 Sol. J. 715; 26 Digest 292, 243.

As to the power to acquire land compulsorily, see the Act of 1909, s. 1, *post*, p. 5096. And as to the use of the land, see s. 2 of the same Act, *post*, p. 5096, as amended by s. 15 (3) of the Electricity (Supply) Act, 1919, *post*, p. 5251.

(b) As to the general restriction on the purchase under statutory powers of houses occupied by the working classes, see s. 137 and Sched. XI., Housing Act, 1936, *ante*, pp. 1736, 1794.

Schedule.

Incorporation
of 38 & 39 Vict.
c. 55, s. 265.

9. Where a local authority are the undertakers section two hundred and sixty-five of the Public Health Act, 1875 (*a*), shall be incorporated with the special order, and in the construction of that section "this Act" shall not mean the Public Health Act, 1875, but shall mean the principal Act and the special order, and the "local authority" shall mean the local authority as such undertakers.

NATURE AND MODE OF SUPPLY.

Systems and
mode of supply.

10. Subject to the provisions of the special order and the principal Act, the undertakers may supply energy within the area of supply for all public and private purposes as defined by the said Act, provided as follows:—

- (a) The energy shall be supplied only by means of some system approved in writing by the [Minister of Transport], and subject to the [Ministry of Transport] regulations; and
- (b) The undertakers shall not, without the express consent (b) of the [Ministry of Transport], and, where the local authority are not themselves the undertakers of the local authority also (c), place any electric line above ground except within premises in the sole occupation or control of the undertakers, and except so much of any service line as is necessarily so placed for the purpose of supply; and
- (c) The undertakers shall not permit any part of any circuit to be connected with earth except so far as may be necessary for carrying out the provisions of the [Ministry of Transport] regulations, unless the connection is for the time being approved by the [Minister of Transport], with the concurrence of the Postmaster-General, and is made in accordance with the conditions, if any, of that approval.

WORKS.

Additional
provisions as
to works.

11. The provisions of the special order as to works shall be in addition but subject to those of the principal Act, and in particular those of the Gasworks Clauses Act, 1847, with respect to breaking up streets, incorporated in the principal Act and set out in the Appendix to this Schedule (*d*).

Powers for
execution of
works.

12.—(1) Subject to the provisions of the principal Act and the special order, the undertakers may exercise all or any of the powers conferred on them by that Act and order, and may break up such streets not repairable by the local authority and such railways and tramways (if any) as they are specially authorised to break up by the special order, so far as those streets, railways, and tramways may for the time being be included in the area of supply, and be, or be upon, land dedicated to

(a) This section was repealed by the P. H. A., 1936, *ante*, p. 1, except so far as may be material for the purposes of any unrepealed enactment in the P. H. A., 1875, *ante*, p. 4331 or any Act directed to be construed therewith. See also the Public Authorities Protection Act, 1893, *ante*, p. 4875. As regards the county of London, the corresponding section is s. 299 of the P. H. (London) A., 1936 (30 Halsbury's Statutes 600).

(b) In determining whether or not to give consent or approval under this section, the Minister must have regard to the provisions of the Electricity (Supply) Act, 1926, Vol. V., *post*.

(c) See the Electric Lighting Act, 1882, s. 14, *ante*, p. 4652. A derrick used in putting up a house in one of the streets of Montreal was brought into contact with the overhead wires of the respondent company, with the result that a current of electricity was diverted to the street and killed the appellant's husband. *Held*, that the respondents being authorised by the Quebec Act (1901), s. 10, in the alternative to place their wires either overhead or underground were not guilty of negligence in adopting one alternative rather than the other, or in neglecting to insulate or guard the wires in the absence of evidence that such precaution would have been effectual to avert the accident (*Dumphy v. Montreal Light, Heat and Power Co.*, [1907] A. C. 454; 20 Digest 212, *b*). The consent of the local authority is now dispensed with by s. 21 of the Electricity (Supply) Act, 1919, *post*, p. 5255.

(d) See Electric Lighting Act, 1882, s. 12, *ante*, p. 4650; Gasworks Clauses Act, 1847, ss. 6—12, 18—20, *ante*, pp. 4165—4168, 4169; Gasworks Clauses Act, 1871, ss. 38—42, 45, and 46, *ante*, pp. 4317, 4318. To save space these enactments, having been already fully set out once in this Work, are not repeated here.

By agreement the telegraphs of the Postmaster-General or his licensee may be placed in the trenches, tubes, pipes, or apparatus of an electric company or "person." (See s. 6 of the Telegraph Act, 1892 (19 Halsbury's Statutes 285).) In that section the word "person" includes any body of persons corporate or unincorporate (Interpretation Act, 1889, s. 19 (18 Halsbury's Statutes 1001)).

public use: Provided, however, as respects any such railway, that the powers hereby granted shall extend only to such parts thereof as pass across or along any highway on the level.

Schedule.

(2) Nothing in the special order shall authorise or empower the undertakers to break up or interfere with any street or part of a street not repairable by the local authority or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as they are specially authorised to break up by the special order, without the consent of the authority, company, or person, by whom that street, railway, or tramway is repairable, or of the [Ministry of Transport] under section thirteen of the Electric Lighting Act, 1882 (*a*), and where the [Ministry of Transport] give that consent, the provisions of the special order shall apply to the street, railway, or tramway to which the consent relates as if the undertakers had been specially authorised to break it up by that order (*b*).

13.—(1) Subject to the provisions of the principal Act, and the special order Street boxes. and the [Ministry of Transport] regulations, the undertakers may construct in any street such boxes (*c*) as may be necessary for purposes in connection with the supply of energy, including apparatus for the proper ventilation of the boxes: Provided that, where the local authority are not themselves the undertakers, no such box or apparatus shall be placed above ground, except with the consent of the authority, body, or person, by whom the street is repairable.

(2) Every such box shall be for the exclusive use of the undertakers and under their sole control, except so far as the [Minister of Transport] otherwise order, and shall be used by the undertakers only for the purpose of leading off service lines and other distributing conductors, or for examining, testing, regulating, measuring,

(*a*) *Ante*, p. 4651. And see as to the Minister of Transport, clause 21 (3), *post*.

(*b*) A company to which the London Electric Supply Act, 1908, applied, had one area of supply north of and one south of the Thames, and wished to connect them by mains running through streets outside either area, which included a bridge belonging to the corporation as trustees of the Bridge House estates, and repairable by them as trustees and not by any local authority. It was held that s. 4 (3) (B) of the Act of 1903 gave power to the company to break up the intervening streets and bridge for the purpose of laying therein the connecting mains, subject to the consent either of the corporation or of the Board of Trade under s. 13 of the Electric Lighting Act, 1882, *ante*, p. 4651, and this sub-section (*London Corporation v. County of London Electric Supply Co.*, [1910] 2 Ch. 208; 74 J. P. 269; 20 Digest 217, 108).

Under ss. 6 and 7 of the Gasworks Clauses Act, 1847, *ante*, p. 4165, as adapted to electric light undertakings by the Electric Lighting Act, 1882, *ante*, p. 4642, the undertakers are empowered to break up streets subject to certain restrictions. By s. 13 of the Act of 1882, *ante*, p. 4651 (which is substantially repeated in this sub-section) nothing in that Act or in any Act incorporated therewith shall authorise the undertakers to break up any street which is not repairable by the local authority without the consent of the person by whom such street is repairable or the written consent of the Board of Trade. It was held by the Court of Appeal (KENNEDY, L. J., *dissentiente*) that where there was no person by whom the street was repairable, the section operated as an absolute prohibition against the breaking up of the street by the undertakers, and that therefore where a strip of land adjoining a street repairable by the local authority had been dedicated to the public by the owner and had become part of the street but was not repairable either by the local authority or anyone else, the local authority as undertakers had no power to break up that portion of the street (*Andrews v. Abertillery U. C.*, [1911] 2 Ch. 398; 75 J. P. 449; 20 Digest 201, 19).

(*c*) A transformer chamber (10' x 7' 6" x 5' 6") was held to be a "street box" in *Wandsworth Board of Works v. County of London Electric Light Co.* (1895), *The Times*, August 5th. Such boxes are "buildings, structures, or works" within s. 161 of the London Building Act, 1930 (23 Halsbury's Statutes 299), and notice under that section must be served on the district surveyor before they are commenced (*Whitechapel Board of Works v. Crow* (1901), 65 J. P. 549; 84 L. T. 595; 20 Digest 202, 21). The circumstance that the undertakers are required by their Provisional Order to give notice of the construction of such boxes to the local authority and to the Postmaster-General, and to construct boxes in accordance with plans approved by those authorities, does not relieve the undertakers from the obligation of giving notice to the district surveyor under s. 145 of the Act of 1894 (now repealed) (11 Halsbury's Statutes 1188) (*Charing Cross and Strand Electricity Supply Corporation v. Woodthorpe* (1903), 67 J. P. 286; 88 L. T. 772; 20 Digest 202, 22). These cases were followed again in *County of London Electric Supply Co., Ltd. v. Perkins* (1908), 72 J. P. 133; 6 L. G. R. 344; 20 Digest 202, 23. As to the liability of undertakers for damage caused by explosions of gas in such chambers, see cases in note (*a*) at p. 4980.

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directing, or controlling, the supply of energy, or for examining or testing the condition of the mains or other portions of the works, or for other like purposes connected with the undertaking, and the undertakers may place therein meters, switches, and any other suitable and proper apparatus, for any of the above purposes.

(3) Every such box, including the upper surface or covering thereof, shall be constructed of such materials, and shall be constructed and maintained by the undertakers in such manner, as not to be a source of danger, whether by reason of inequality of surface or otherwise.

(4) Where the local authority are not themselves the undertakers, they may, with the approval of the [Minister of Transport], prescribe the hours during which the undertakers are to have access to the boxes, and if the undertakers during any hours not so prescribed remove or displace or keep removed or displaced the upper surface or covering of any box without the consent of the local authority, they shall be liable for each offence to a penalty not exceeding five pounds, and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

Notice of works, with plan, to be served on Postmaster-General and local authority.

14 (a).—(1) Where the exercise of any of the powers of the undertakers in relation to the execution of any works (including the construction of boxes) will involve the placing of any works in, under, along or across any street or public bridge, the following provisions shall have effect:—

(a) One month [or in the case of service lines, seven days (b)] before commencing the execution of the works (not being repairs, renewals, or amendments of existing works of which the character and position are not altered), the undertakers shall serve a notice upon the Postmaster-General and the local authority, describing the proposed works, together with a plan (c) of the works showing the mode and position in which the works are intended to be executed, and the manner in which it is intended that the street or bridge, or any sewer, drain, or tunnel, therein or thereunder, is to be interfered with, and shall, upon being required to do so by the Postmaster-General or the local authority, give him or them any such further information in relation thereto as he or they desire.

No part of the month of August shall be included in calculating the above-mentioned period of one month.

(b) The Postmaster-General or the local authority may, in his or their discretion, approve any such works or plan, subject to such amendments or conditions as may seem fit, or may disapprove them, and may give notice of that approval or disapproval to the undertakers.

(c) Where the Postmaster-General or the local authority approve any such works or plan, subject to any amendments or conditions with which the undertakers are dissatisfied, or disapprove any such works or plan, the undertakers may appeal to the [Minister of Transport], and the [Minister of Transport] may inquire into the matter, and allow or disallow the appeal, and may approve any such works or plan, subject to such amendments or conditions as seem fit, or may disapprove them.

(d) If the Postmaster-General or the local authority fail to give any such notice of approval or disapproval to the undertakers within one month after the service of the notice upon them, he or they shall be deemed to have approved the works and plan.

(e) Notwithstanding anything in the special order or the principal Act, the undertakers shall not be entitled to execute any such works as above specified,

(a) See further as to the protection and rights of the Postmaster-General, the Electricity (Supply) Act, 1919, s. 22, *post*, p. 5256.

(b) The words in brackets were added by s. 43 and Sched. V., Electricity (Supply) Act, 1926, Vol. V., *post*, and will apply not only where the provision in the text has been or is incorporated in any Act or Order but will be added to any corresponding provision in any special Act or Order. "Service lines" are defined in clause 1, *ante*, p. 4949.

(c) See definition, clause 1, *ante*, p. 4949. See also *Edgware Highway Board v. Colne Valley Water Co.*, and *East Molesey L. B. v. Lambeth Waterworks Co.*, *ante*, p. 4185.

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except so far as they may be of a description and in accordance with a plan which has been approved, or is to be deemed to have been approved, by the Postmaster-General and the local authority, or by the [Minister of Transport], as above mentioned; but where any such works, description, and plan are so approved, or to be deemed to be approved, the undertakers may cause those works to be executed in accordance with the description and plan, subject in all respects to the provisions of the special order and the principal Act.

- (f) If the undertakers make default in complying with any of the requirements or restrictions of this section, they shall (in addition to any other compensation which they may be liable to make under the provisions of the special order or the principal Act) make full compensation to the Postmaster-General and the local authority for any loss or damage which he or they may incur by reason thereof, and in addition thereto, they shall be liable for each default to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.
- (2) In the application of this section to a street or public bridge (not within a county borough) which is repairable by the county council, a reference to the county council shall be substituted for a reference to the local authority.

(3) In the application of this section within any area where the undertakers are the local authority, the reference to the local authority and to sewers, drains, or tunnels in or under streets or bridges shall not apply, except so far as a reference to the county council is substituted for a reference to the local authority.

(4) Nothing in this section shall exempt the undertakers from any penalty or obligation to which they may be liable under the special order or otherwise by law in the event of any telegraphic line of the Postmaster-General being at any time injuriously affected by the undertakers' works or their supply of energy.

15 (a). Where the exercise of the powers of the undertakers in relation to the execution of any works will involve the placing of any works in, under, along, or across any street or part of a street not repairable by the local authority, including, where the area of supply is not wholly in a county borough, the county council, or over or under any railway, tramway or canal, the following provisions shall have effect (b) unless otherwise agreed between the parties interested:—

As to streets not repairable by local authority, railways, tramways, and canals (a).

- (a) One month before commencing the execution of the works (not being repairs, renewals, or amendments of existing works of which the character and position are not altered) the undertakers shall, in addition to any other notices which they may be required to give under the special order, or the principal Act, serve a notice upon the body or person liable to repair the street or part of a street, or the body or person for the time being entitled to work the railway or tramway, or the owners of the canal (as the case may be), in this section referred to as the "owners," describing the proposed works, together with a plan of the works showing the mode and position in which the works are intended to be executed and placed, and shall, upon being required to do so by any such owners, give them any such further information in relation thereto as they desire.
- (b) Every such notice shall contain a reference to this section, and direct the attention of the owners to whom it is given to the provisions thereof.
- (c) Within three weeks after the service of any such notice and plan upon any owners, those owners may, if they think fit, serve a requisition upon the undertakers requiring that any question in relation to the works, or to

(a) See further as to the application of this and clauses 16, 19, 20 and 77, *post*, in relation to the power of placing a line across or along any railway, canal, inland navigation, dock or harbour, the Electricity (Supply) Act, 1919, s. 22, *post*, p. 5256, and as to a saving for mains, etc., laid in bridges which are to be reconstructed or altered under the Bridges Act, 1929, see s. 5, *ibid.*, Vol. V., *post*.

(b) See also Rules vi. and vii. of the Electricity Commissioners Rules, *ante*, p. 2698.

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- compensation in respect thereof, and any other question arising upon the notice or plan, shall be settled by arbitration: and thereupon that question, unless settled by agreement, shall be determined by arbitration accordingly.
- (d) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of the street, railway, tramway, or canal, and may, if he thinks fit, require the undertakers to execute any temporary or other works so as to avoid any interference with any traffic so far as may be possible.
- (e) Where no such requisition as in this section mentioned is served upon the undertakers, or where after any such requisition has been served upon them any question required to be settled by arbitration has been so settled, the undertakers may, upon paying or securing any compensation which they may be required to pay or secure, cause to be executed the works specified in such notice and plan as aforesaid, and may repair, renew, and amend them (provided that their character and position are not altered), but subject in all respects to the provisions of the special order and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been determined by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.
- (f) All works to be executed by the undertakers under this section shall be carried out to the reasonable satisfaction of the owners, and those owners shall have the right to be present during the execution of the works.
- (g) Where the repair, renewal, or amendment of any existing works, of which the character or position is not altered, will involve any interference with any railway or with any tramway over or under which those works have been placed, the undertakers shall, unless it is otherwise agreed between the parties, or in cases of emergency, give to the owners not less than twenty-four hours' notice before commencing to effect the repair, renewal, or amendment, and the owners shall be entitled by their officer to superintend the works, and the undertakers shall conform to such reasonable requirements as may be made by the owners or that officer. The notice shall be in addition to any other notices which the undertakers may be required to give under the special order or the principal Act.
- (h) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of the special order or the principal Act) make full compensation to the owners affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable for each default to a penalty not exceeding ten pounds and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

Street authority, etc., may give notice of desire to break up streets, etc., on behalf of undertakers (a).

16. Any body or person for the time being liable to repair any street or part of a street, or entitled to work any railway or tramway which the undertakers are empowered to break up for the purposes of the special order, may, if they think fit, serve a notice upon the undertakers stating that they desire to exercise or discharge all or any part of any of the powers or duties of the undertakers as therein specified in relation to the breaking up, filling in, reinstating, or making good any streets, bridges, sewers, drains, tunnels, or other works vested in or under the control or management of that body or person, and may amend or revoke any such notice by another notice similarly served.

Where any such body or person (in this section referred to as the "givers of the notice") have given notice that they desire to exercise or discharge any such specified powers and duties of the undertakers, then so long as that notice remains in force the following provisions shall have effect, unless it is otherwise agreed between the parties interested:—

(a) See the note (a), *ante*, p. 4957.

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- (a) The undertakers shall not be entitled to proceed themselves to exercise or discharge any such specified powers or duties as aforesaid, except where they have required the givers of the notice to exercise or discharge those powers or duties, and the givers of the notice have refused or neglected to comply with that requisition, as hereinafter provided, or in cases of emergency.
- (b) In addition to any other notices which they are required to give under the provisions of the special order or the principal Act, the undertakers shall, not more than four days and not less than two days before the exercise or discharge of any such powers or duties so specified as aforesaid is required to be commenced, serve a requisition upon the givers of the notice stating the time when that exercise or discharge is required to be commenced, and the manner in which any such powers or duties are required to be exercised or discharged.
- (c) Upon receipt of any such requisition as last aforesaid, the givers of the notice may proceed to exercise or discharge any such powers or duties as required by the undertakers, subject to the like restrictions and conditions, so far as they are applicable, as the undertakers would themselves be subject to in that exercise or discharge.
- (d) If the givers of the notice decline or, for twenty-four hours after the time when any such exercise or discharge of any powers or duties is by any requisition required to be commenced, neglect to comply with the requisition, the undertakers may themselves proceed to exercise or discharge the powers or duties therein specified in like manner as they might have done if such notice as aforesaid had not been given to them by the givers of the notice.
- (e) In any case of emergency the undertakers may themselves proceed at once to exercise or discharge so much of any such specified powers or duties as aforesaid as may be necessary for the actual remedying of any defect from which the emergency arises without serving any requisition on the givers of the notice: but in that case the undertakers shall, within twelve hours after they begin to exercise or discharge such powers or duties as aforesaid, give information thereof in writing to the givers of the notice.
- (f) If the undertakers exercise or discharge any such specified powers or duties as aforesaid otherwise than in accordance with the provisions of this section, they shall be liable for each offence to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.
- (g) All expenses properly incurred by the givers of the notice in complying with any requisition of the undertakers under this section shall be repaid to them by the undertakers, and may be recovered summarily.
- (h) The givers of the notice may, if they think fit, require the undertakers where the local authority are not themselves the undertakers, to give them such security for the repayment to them of any expenses incurred or to be incurred by them under this section as may be determined in manner provided by this Schedule. If the undertakers fail to give any such security within seven days after being required to do so, or in case of difference after the difference has been determined by a court of summary jurisdiction, they shall not be entitled to serve any further requisition upon the givers of the notice requiring them to exercise or discharge any powers or duties under this section until the security has been duly given.

Provided that nothing in this section shall in any way affect the rights of the undertakers to exercise or discharge any powers or duties conferred or imposed upon them by special order or the principal Act in relation to the execution of any works beyond the actual breaking up, filling in, reinstating or making good any such street or part of a street, or any such bridges, sewers, drains, tunnels, or other works, or railway or tramway as in this section mentioned.

17. The undertakers may alter the position (a) of any pipes (except, in a case

As to alteration of pipes, wires, etc., under streets.

(a) See the Electric Lighting Act, 1882, s. 16, and notes thereto, *ante*, p. 4652.

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- (a) One month before commencing any such alterations the undertakers, or the body or person (as the case may be,) in this section referred to as the "operators," shall serve a notice upon the body or person for the time being entitled to the pipes, wires, electric lines, or works (as the case may be), in this section referred to as the "owners," describing the proposed alterations, together with a plan showing the manner in which it is intended that the alterations shall be made, and shall, upon being required to do so by any such owners, give them any such further information in relation thereto as they may desire.
- (b) Within three weeks after the service of any such notice and plan upon any owners those owners may, if they think fit, serve a requisition upon the operators requiring that any question in relation to the works or to compensation in respect thereof, or any other question arising upon such notice or plan as aforesaid shall be settled by arbitration; and thereupon that question, unless settled by agreement, shall be determined by arbitration accordingly.
- (c) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of the pipes, wires, electric lines, or works, and may, if he thinks fit, require the operators to execute any temporary or other works, so as to avoid interference with any purpose for which the pipes, wires, electric lines, or works are used so far as possible.
- (d) Where no such requisition as in this section mentioned is served upon the operators, the owners shall be held to have agreed to the notice or plan served on them as aforesaid, and in that case, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the operators, upon paying or securing any compensation which they may be required to pay or secure, may cause the alterations specified in such notice and plan as aforesaid to be made, but subject in all respects to the provisions of the principal Act and the special order, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been determined by arbitration as hereinbefore mentioned or as may be agreed upon between the parties.
- (e) At any time before any operators are entitled to commence any such alterations as aforesaid, the owners may serve a statement upon the operators stating that they desire to execute the alterations themselves, and where any such statement has been served upon the operators, they shall not be entitled to proceed themselves to execute the alterations, except where they have notified to the owners that they require them to execute the alterations, and the owners have refused or neglected to comply with the notification as hereinafter provided.
- (f) Where any such statement as last aforesaid has been served upon the operators, they shall, not more than forty-eight hours and not less than twenty-four hours before the execution of the alterations is required to be commenced, serve a notification upon the owners stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.
- (g) Upon receipt of any such notification as last aforesaid, the owners may proceed to execute the alterations as required by the operators, subject to the

(b) See s. 149 of the P. H. A., 1875, *ante*, p. 4375, and *Southwark and Vauxhall Water Co. v. Wandsworth Board of Works*, [1898] 2 Ch. 603; 62 J. P. 756; 26 Digest 488, 1997.

like restrictions and conditions, so far as they are applicable, as the operators would themselves be subject to in executing the alterations.

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- (h) If the owners decline or, for twenty-four hours after the time when any such alterations are required to be commenced, neglect to comply with the notification, the operators may themselves proceed to execute the alterations in like manner as they might have done if no such statement as aforesaid had been served upon them.
- (i) All expenses properly incurred by any owners in complying with any notification of any operators under this section shall be repaid to them by the operators, and may be recovered summarily.
- (j) Any owners may, if they think fit, by any statement served by them under this section upon any operators, not being a local authority, require the operators to give them such security for the repayment to them of any expenses to be incurred by them in executing any alterations as above mentioned as may be determined in manner provided by the special order, and where any operators have been so required to give security, they shall not be entitled to serve a notification upon the owners requiring them to execute the alterations until the security has been duly given.
- (k) If the operators make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of the special order or the principal Act) make full compensation to the owners affected thereby for any loss, damage, or penalty which they may incur by reason thereof, and in addition thereto they shall be liable for each default to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds: Provided that the operators shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances.

18.—(1) Where the undertakers require to dig or sink any trench for laying down or constructing any new electric lines (other than service lines) or other works near to which any sewer, drain, watercourse, defence, or work under the jurisdiction or control of the local authority, or any main, pipe, syphon, electric line, or other work belonging to any gas, electric supply, or water company has been lawfully placed, or where any gas or water company require to dig or sink any trench for laying down or constructing any new mains or pipes (other than service pipes) or other works near to which any lines or works of the undertakers have been lawfully placed, the undertakers or the gas or water company (as the case may be), in this section referred to as the "operators," shall, unless it is otherwise agreed between the parties interested, or in case of a sudden emergency, give to the local authority or to the gas, electric supply, or water company, or to the undertakers (as the case may be), in this section referred to as the "owners," not less than three days' notice before commencing to dig or sink such trench as aforesaid, and those owners shall be entitled by their officer to superintend the work, and the operators shall conform with such reasonable requirements as may be made by the owners or the officer for protecting from injury every such sewer, drain, watercourse, defence, main, pipe, syphon, electric line, or work, and for securing access thereto, and they shall also, if required by the owners thereof, repair any damage that may be done thereto (a).

Laying of electric lines, etc., near sewers, etc., or gas or water pipes, or other electric lines.

(2) Where the operators find it necessary to undermine but not alter the position of any pipe, electric line, or work, they shall temporarily support it in position during the execution of their works, and before completion provide a suitable and proper foundation for it where so undermined.

(a) For a case in which the Postmaster-General was held entitled to recover, under the provisions of a local tramway Act, for injury to a telephone cable through a leakage of electricity, see *Postmaster-General v. Blackpool, etc. Tramroad Co.*, [1921] 1 K. B. 114; 85 J. P. 71; 20 Digest 212, 77. As to the effect of an agreement between a corporation and the National Telephone Company, whereby the company agreed to hold the corporation free from liability for damage to the wires of the company arising from the existence in the streets of the mains and services of the corporation, see *Postmaster-General v. Liverpool Corporation*, 86 J. P. 157; affirmed in H. of L., [1923] A. C. 587; 87 J. P. 157; 20 Digest 212, 79.

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(3) Where the operators (being the undertakers) lay any electric line, crossing or liable to touch any mains, pipes, lines, or services belonging to any gas, electric supply, or water company, the conducting portion of the electric line shall be effectively insulated in a manner approved by the [Minister of Transport]; and the undertakers shall not, except with the consent of the gas, electric supply, or water company, as the case may be, and of the [Minister of Transport], lay their electric lines so as to come into contact with any such mains, pipes, lines, or services, or, except with the like consent, employ any such mains, pipes, lines, or services as conductors for the purposes of their supply of energy (a).

(4) Any question or difference which may arise under this section shall be determined by arbitration (b).

(5) If the operators make default in complying with any of the requirements of this section they shall make full compensation to all owners affected thereby for any loss, damage, penalty, or costs which they may incur by reason thereof; and in addition thereto they shall be liable for each default to a penalty not exceeding ten pounds, and to a daily penalty not exceeding five pounds (c): Provided that the operators shall not be subject to any such penalty if the court are of opinion that the case was one of emergency, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the operators were ignorant of the position of the sewer, drain, watercourse, defence, main, pipe, syphon, electric line, or work affected thereby, and that that ignorance was not owing to any negligence on the part of the operators.

(6) For the purposes of this section the expression "gas company" shall mean any body or person lawfully supplying gas; the expression "water company" shall mean any body or person lawfully supplying water or water power; and the expression "electric supply company" shall mean any body or person supplying energy in pursuance of the principal Act but not in pursuance of the special order.

(7) Where the local authority are themselves the undertakers, the references in this section to the local authority, and to sewers, drains, watercourses, defences, or works under the jurisdiction or control of that local authority, shall not apply.

For protection of railway and canal companies.

19. In the exercise of any of the powers of the special order relating to the execution of works, the undertakers shall not in any way injure the railways, tunnels, arches, works, or conveniences belonging to any railway or canal (d) company, nor obstruct or interfere with the working of the traffic passing along any railway or canal.

For protection of telegraphic and telephonic wires (e).

20.—(1) The undertakers shall take all reasonable precautions in constructing, laying down, and placing their electric lines and other works of all descriptions, and in working their undertaking so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic, or electric signalling communication, or the currents in that wire or line, whether that wire or line be or be not in existence at the time of the laying down or placing of the electric lines or other works.

If any question arises between the undertakers and the owner of any such wire or line as to whether the undertakers have constructed, laid down, or placed their electric lines or other works or worked their undertaking in contravention of this sub-section, and as to whether the working of that wire or line or the current therein is or is not injuriously affected thereby, that question shall be determined by arbitration; and the arbitrator (unless he is of opinion that the wire or line, not having

(a) See Regulation 3 of the Regulations, *ante*, p. 2622.

(b) As to appointment of arbitrator, see s. 28 of Electric Lighting Act, 1882, *ante*, p. 4657.

(c) As to recovery of penalties, see clause 76, *post*, p. 4979. The offence of non-compliance with the requirements of the section is a continuing offence, and therefore s. 11 of the S. J. A., 1848 (11 Halsbury's Statutes 278), does not apply. The right to recover penalties is not barred by the reference to arbitration and the award (*Chepstow Electric Light and Power Co. v. Chepstow Gas and Coke Consumers' Co., Ltd.*, [1905] 1 K. B. 198; 69 J. P. 72; 20 Digest 203, 26).

(d) As to canals, see also the Electric Lighting Act, 1882, s. 16, *ante*, p. 4652. And see further note (a), *ante*, p. 4957, and the provisions of the Act of 1919, *post*, p. 5243, therein referred to.

(e) See note (a), *ante*, p. 4957.

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been so in existence at such time as aforesaid, has been placed in unreasonable proximity to the electric lines or works of the undertakers) may direct the undertakers to make any alterations in, or additions to, their system, so as to comply with the provisions of this section, and the undertakers shall make those alterations or additions accordingly.

(2) Seven days before commencing to lay down or place any electric line, or to use any electric line in any manner whereby the work of telegraphic or telephonic or electric signalling communication through any wire or line lawfully laid down or placed in any position may be injuriously affected, the undertakers shall, unless otherwise agreed between the parties interested, give to the owner of the wire or line notice in writing specifying the course, nature and gauge of the electric line, and the manner in which the electric line is intended to be used, and the amount and nature of the currents intended to be transmitted thereby, and the extent to and manner in which (if at all) earth returns are proposed to be used; and any owner entitled to receive that notice may serve a requisition on the undertakers, requiring them to adopt such precautions as may be therein specified in regard to the laying, placing, or user of the electric line for the purpose of preventing the injurious affection; and the undertakers shall conform with such reasonable requirements as may be made by the owner for the purpose of preventing the communication through the wire or line from being injuriously affected as aforesaid.

If any difference arises between any such owner and the undertakers with respect to the reasonableness of any requirements so made, that difference shall be determined by arbitration.

Provided that nothing in this sub-section shall apply to repairs or renewals of any electric line so long as the course, nature, and gauge of the electric line, and the amount and nature of the current transmitted thereby, are not altered.

(3) If in any case the undertakers make default in complying with the requirements of this section, they shall make full compensation to every such owner as aforesaid for any loss or damage which he may incur by reason thereof, and in addition thereto they shall be liable for each default to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings: Provided that the undertakers shall not be subject to any such penalty as aforesaid if the court are of opinion that the case was one of emergency and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances, or that the default was due to the fact that the undertakers were ignorant of the position of the wire or line affected thereby, and that that ignorance was not owing to any negligence on the part of the undertakers.

(4) Nothing in this section contained shall be held to deprive any owner of any existing rights to proceed against the undertakers by indictment, action, or otherwise, in relation to any of the matters aforesaid.

COMPULSORY WORKS.

21.—(1) The undertakers shall, within a period of two years after the commencement of the special order, lay down suitable and sufficient distributing mains for the purposes of general supply throughout every street or part of a street specified in that behalf in the special order, and shall thereafter maintain those mains.

(2) In addition to the mains hereinbefore specified the undertakers shall, at any time after the expiration of eighteen months after the commencement of the special order, lay down suitable and sufficient distributing mains for the purposes of general supply throughout every other street or part of a street within the area of supply, upon being required to do so in manner provided by the special order.

All such mains as last above mentioned (unless already laid down) shall be laid down by the undertakers within six months after any requisition in that behalf served upon them in accordance with the provisions of the special order has become binding upon them, or within such further time as may in any case be approved by the [Ministry of Transport].

(3) When any such requisition is made in respect of any street not repairable by the local authority, which the undertakers are not specially authorised to break up by the special order, the undertakers shall (unless the authority, or person by whom that street is repairable, consent to the breaking up thereof) forthwith apply to the [Ministry of Transport] under section thirteen of the Electric Lighting Act,

Mains, etc., to be laid down in streets specified in special order and in remainder of area of supply.

Schedule. 1882 (a), for the written consent of the [Minister] authorising and empowering the undertakers to break up that street, and the requisition shall not be binding upon them if the [Ministry of Transport] refuse their consent in that behalf.

As to laying of electric line under special agreement.

22. Where the local authority are not themselves the undertakers, the undertakers shall, twenty-eight days at least before commencing to lay in any street any electric line which is intended for supplying energy to any particular consumer, and not for the purposes of general supply, serve upon the local authority, and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the electric line so to be laid, a notice stating that the undertakers intend to lay the electric line, and setting forth the effect of this section, and if within that period any two or more of those owners or occupiers require in accordance with the provisions of the special order that a supply shall be given to their premises, the necessary distributing main shall be laid by the undertakers at the same time as the electric line intended for the particular consumer.

If undertakers fall to lay down mains, etc., order may be revoked.

23.—(1) If the undertakers, not being a local authority, make default in laying down any distributing mains in accordance with the provisions of the special order within the periods prescribed in that behalf respectively, they shall be liable for each default to a penalty not exceeding five pounds for each day during which the default continues, and if the [Ministry of Transport] are of opinion in any case that the default is wilful and unreasonably prolonged they may, after considering any representations of the local authority, deal with the special order in manner provided by this section.

(2) If the local authority are themselves the undertakers, and make default in laying down any distributing main in accordance with the provisions of the special order, within the periods prescribed in that behalf respectively, the [Ministry of Transport] may deal with the special order in manner provided by this section.

(3) Where the [Ministry of Transport] are authorised under this section to deal with a special order, they may either revoke the order as to the whole or any part of the area of supply, or, if the undertakers so desire, suffer it to remain in force as to that area or part thereof, subject to such conditions as they think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in the special order: Provided that the [Ministry of Transport] shall not revoke the special order as to part only of the area of supply where the undertakers make a representation that they desire to be relieved of their liabilities as respects the rest of the area of supply, and in that case the [Ministry of Transport] shall not under this section revoke the special order otherwise than as to the whole of the area of supply.

Manner in which requisition is to be made.

24.—(1) Any requisition requiring the undertakers to lay down distributing mains for the purposes of general supply throughout any street or part of a street may be made by six or more owners or occupiers of premises along that street or part of a street, or, where the local authority are not themselves the undertakers and have the control and management of the public lamps in that street or part of a street, by the local authority.

(2) Every such requisition shall be signed by the persons making it, or by the local authority (as the case may be), and shall be served upon the undertakers.

(3) Forms of requisition shall be kept by the undertakers at their office, and a copy shall, on application, be supplied free of charge to any owner or occupier of premises within the area of supply and, where necessary, to the local authority, and any requisition so supplied shall be deemed valid in point of form.

Provisions on requisition by owners or occupiers.

25.—(1) Where any such requisition is made by any such owners or occupiers as aforesaid, the undertakers (if they think fit) may, within fourteen days after the service of the requisition upon them, serve a notice on all the persons by whom the requisition is signed, stating that they decline to be bound by the requisition unless those persons or some of them will bind themselves to take, or will guarantee that there shall be taken, a supply of energy for a period of three years at least, of such amount in the aggregate (to be specified by the undertakers in the notice) as will, at the rates of charge for the time being charged by the undertakers for a

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supply of energy from distributing mains to the ordinary consumers within the area of supply, produce annually such reasonable sum as is specified by the undertakers in the notice: Provided that in the notice the undertakers shall not, without the authority of the [Minister of Transport], specify any sum exceeding twenty per centum upon the expense of providing and laying down the required distributing mains and any other mains or additions to existing mains which may be necessary for the purpose of connecting those distributing mains with the nearest available source of supply.

(2) Where such a notice is served the requisition shall not be binding on the undertakers unless, within fourteen days after the service of the notice on all the persons signing the requisition has been effected, or in case of difference within fourteen days after the delivery of the arbitrator's award, there be tendered to the undertakers an agreement severally executed by those persons or some of them, binding them to take or guaranteeing that there shall be taken a supply of energy for a period of three years at the least of such amount as will in the aggregate at the rates of charge above specified produce an annual sum amounting to the sum specified in the notice or determined by arbitration under this section, nor unless sufficient security for the payment to the undertakers of all moneys which may become due to them from those persons under the agreement is offered to the undertakers (if required by them by such notice as aforesaid) within the period limited for the tender of the agreement as aforesaid.

(3) If the undertakers consider that the requisition is unreasonable, or that, under the circumstances of the case, the provisions of this section ought to be varied, they may, within fourteen days after the service of the requisition upon them, appeal to the [Minister of Transport], and [the Minister] after such inquiry (if any) as [he] think[s] fit, may, by order, either determine that the requisition is unreasonable, and shall not be binding upon the undertakers, or may authorise the undertakers by their notice to require a supply of energy to be taken for such longer period than three years, and to specify such sum or percentage, whether calculated as hereinbefore provided or otherwise, as is fixed or directed by the order, and the terms of the above-mentioned agreement shall be varied accordingly.

(4) In case of any appeal to the [Minister of Transport] under this section, any notice by the undertakers under this section may be served by them within fourteen days after the decision of the [Minister of Transport].

(5) If any difference arises between the undertakers and any persons signing any such requisition as to any such notice or agreement, that difference shall, subject to the provisions of this section and to the decision of the [Minister of Transport] upon any such appeal as aforesaid, be determined by arbitration.

26. Where any such requisition is made by the local authority it shall not be binding on the undertakers, unless at the time when the service is effected, or within fourteen days thereafter, there be tendered to the undertakers (if required by them) an agreement executed by the local authority, and binding them to take for a period of three years at the least a supply of energy for lighting such public lamps in the street or part of a street in respect of which the requisition is made as may be under their management or control.

Provisions on
requisition by
local authority.

SUPPLY (a).

27.—(1) The undertakers shall, upon being required to do so by the owner or occupier of any premises situate within fifty yards from any distributing main of

Undertakers to
furnish sufficient
supply of
energy to
owners and
occupiers within
the area of
supply.

(a) See also as to the application of this section to lines across railways, etc., the Electricity (Supply) Act, 1919, s. 22, *post*, p. 5256. Undertakers were under a contract to supply light to the inhabitants of a district and to the streets, public places and private property therein, and in order to carry out the undertaking to do certain specified things and to provide everything which might be necessary whether specified or not for the purpose of supplying electric light to the street lamps. In consideration of these requirements the appellants who were consumers were bound to pay "at such rates as will yield to the contractors a return equal to 10 per cent. over the actual cost of generating the light." It was held that the words "generating the light" covered the whole series of operations leading up to the production of light in the lamps and the "actual cost" included depreciation of plant, rent, rates, taxes and insurance (*Bulawayo Municipality v. Bulawayo Water-works Co., Ltd.*, [1908] A. C. 241; 20 Digest 208, 51).

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The cost of so much of any electric line for the supply of energy to any owner or occupier as may be laid upon the property of that owner or in the possession of that occupier, and of so much of any such electric lines as it may be necessary to lay for a greater distance than sixty feet from any distributing main of the undertakers, although not on that property, shall, if the undertakers so require be defrayed by that owner or occupier.

(2) Every owner or occupier of premises requiring a supply of energy shall—

(a) Serve a notice upon the undertakers specifying the premises in respect of which the supply is required and the maximum power required to be supplied, and the day (not being an earlier day than a reasonable time after the date of the service of the notice) upon which the supply is required to commence; and

(b) If required by the undertakers, enter into a written contract with them to continue to receive and pay for a supply of energy for a period of at least two years of such an amount that the payment to be made for the supply, at the rate of charge for the time being charged by the undertakers for a supply of energy to ordinary consumers within the area of supply, shall not be less than twenty per centum per annum on the outlay incurred by the undertakers in providing any electric lines required under this section to be provided by them for the purpose of the supply, and if required by the undertakers give to them security for the payment to them of all moneys which may become due to them by the owner or occupier in respect of any electric lines to be furnished by the undertakers, and in respect of energy to be supplied by them (c).

(3) Provided always, that the undertakers may, after they have given a supply of energy in respect of any premises, by notice in writing, require the owner or occupier of those premises, within seven days after the date of the service of the

(a) As to payment of the cost of an electric installation for a country mansion as between tenant for life and remainderman, see *Re Freake's Settlement*, *Kinnaird v. Freake*, [1902] 1 Ch. 97; 20 Digest 219, 112; but in a later case it was held that an electric installation was not an "addition" to a building within the meaning of s. 13 of the Settled Land Act, 1890 (*Re Clarke's Settlement*, [1902] 2 Ch. 327; 20 Digest 219, 113); see also *Re Blagrove's Settled Estates* (1902), 87 L. T. 62, on appeal, [1903] 1 Ch. 560; 20 Digest 219, 114. For a case in which undertakers were held liable for injury resulting to a workman owing to a live wire being left upon premises when they had previously disconnected the installation, see *Wheeler v. Marylebone Corporation* (1910), 32 M. C. C. 223.

(b) Where consent under their regulations was given by the Electricity Commissioners allowing undertakers to change over from direct current to alternating current, and a condition was imposed that the undertakers should pay to consumers affected the reasonable cost (to be determined by arbitration) of and incidental to the change-over, including compensation for any loss or damage incurred in consequence of the alteration, it was held that the arbitrator could award to a consumer the whole sum necessary to put himself into the same position with alternating current as he had been in with direct current, including (1) the cost of purchasing and installing new apparatus, and (2) damages incurred through loss of business during the period of transition (*Lakeman v. Chester Corporation* (1933), 97 J. P. 141; 148 L. T. 564; Digest Supp.).

(c) Where an owner who had complied with all the statutory conditions demanded a supply it was held that the undertaker could not successfully set up by way of defence to an information that certain trade unions would not permit the work to be done and that they were prevented by *force majeure* from providing a supply (*Hackney B. C. v. Doré*, [1922] 1 K. B. 431; 86 J. P. 45; 20 Digest 205, 37). As to the liability of the members of an electricity committee of a council for failure to supply during the general strike, see *Scammell & Nephew, Ltd. v. Hurley*, [1929] 1 K. B. 419; 93 J. P. 99; Digest Supp. As to persons requiring a stand-by supply, see s. 23, Electricity (Supply) Act, 1919, *post*, p. 5259.

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notice, to give to them security for the payment of all moneys which may become due to them in respect of the supply, in case the owner or occupier has not already given that security, or in case any security given has become invalid or is insufficient; and in case any such owner or occupier fail to comply with the terms of the notice, the undertakers may, if they think fit, discontinue to supply energy for the premises so long as the failure continues (a).

(4) Provided also, that if the owner or occupier of any such premises as aforesaid uses any form of lamp or burner, or uses the energy supplied to him by the undertakers for any purposes, or deals with it in any manner so as to interfere unduly or improperly with the efficient supply of energy to any other body or person by the undertakers, the undertakers may, if they think fit, discontinue to supply energy to those premises so long as the lamp or burner is so used, or the energy is so used or dealt with.

(5) Provided also, that the undertakers shall not be compelled to give a supply of energy to any premises unless they are reasonably satisfied that the electric lines, fittings, and apparatus therein are in good order and condition, and not calculated to affect injuriously the use of energy by the undertakers or by other persons.

(6) If any difference arises under this section as to any improper use of energy or as to any alleged defect in any electric lines, fittings, or apparatus, that difference shall be determined by arbitration.

28.—(1) The maximum power with which any consumer shall be entitled to be supplied shall be of such amount as he may require to be supplied with, not exceeding what may be reasonably anticipated as the maximum consumption on his premises: Provided that where any consumer has required the undertakers to supply him with a maximum power of any specified amount he shall not be entitled to alter that maximum except upon one month's notice to the undertakers, and any expenses reasonably incurred by the undertakers in respect of the service lines by which energy is supplied to the premises of that consumer, or any fittings or apparatus of the undertakers upon those premises, consequent upon the alteration, shall be paid by him to the undertakers, and may be recovered summarily as a civil debt.

(2) If any difference arises between any such owner or occupier and the undertakers as to what may be reasonably anticipated as the consumption on his premises or as to the reasonableness of any expenses under this section, that difference shall be determined by arbitration.

29. Where the local authority are not themselves the undertakers, the undertakers shall, upon receiving reasonable notice from the local authority requiring them to supply energy to any public lamps within the distance of seventy-five yards from any distributing main of the undertakers in which they are for the time being required to maintain a current of energy for the purposes of general supply under the special order, or the [Ministry of Transport] regulations, give and continue to give a supply of energy to those lamps in such quantities as the local authority may require to be supplied.

30.—(1) Whenever the undertakers make default in supplying energy to any owner or occupier of premises to whom they may be and are required to supply energy under the special order, they shall be liable in respect of each default to a penalty not exceeding forty shillings for each day on which the default occurs (b).

(a) See also the power of refusing a supply given by s. 18, Electric Lighting Act, 1909, *post*, p. 5102.

(b) The fact that penalties are imposed prevents a consumer from having an action for damages for failure to supply. See *Clegg, Parkinson & Co. v. Earby Gas Co.*, *ante*, p. 4316. Where a consumer receives a supply of electricity by virtue of statutory right and not by virtue of special contract, he cannot claim damages for failure to supply electricity at the declared voltage though penalties for doing so are imposed (*Stevens v. Aldershot Gas, Water and District Lighting Co.* (1932), 102 L. J. K. B. 12; Digest Supp.). But this section only applies in the case of consumers to whom the undertakers are bound to make a supply. In the case of other consumers supplied by special agreement an action is maintainable for breach of the agreement (*Morris and Bastert, Ltd. v. Loughborough Corporation*, [1908] 1 K. B. 205; 71 J. P. 521; 20 Digest 204, 31). An injunction was granted to restrain a corporation from discontinuing or curtailing a supply under an agreement owing to increased cost of production (*Taylor v. West Bromwich Corporation* (1916), 38 M. C. C. 13).

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(2) Where the local authority are not themselves the undertakers, and the undertakers make default in supplying energy to the public lamps to which they may be and are required to supply energy under the special order, the undertakers shall be liable in respect of each default to a penalty not exceeding forty shillings for each lamp, and for each day on which the default occurs.

(3) Whenever the undertakers make default in supplying energy in accordance with the terms of the [Ministry of Transport] regulations they shall be liable to such penalties as are prescribed by the regulations in that behalf.

(4) Provided that the penalties to be inflicted on the undertakers under this section shall in no case exceed in the aggregate in respect of any defaults not being wilful defaults on the part of the undertakers the sum of fifty pounds for any one day, and provided also that in no case shall any penalty be inflicted in respect of any default if the court are of opinion that the default was caused by inevitable accident or force majeure or was of so slight or unimportant a character as not materially to affect the value of the supply (a).

PRICE (b).

Methods of charging.

31.—(1) The undertakers may charge for energy supplied by them to any ordinary consumer (otherwise than by agreement)—

(1) By the actual amount of energy so supplied; or

(2) By the electrical quantity contained in the supply; or

(3) By such other method as may for the time being be approved by the [Minister of Transport].

(2) . . . (c).

(3) Provided also, that before commencing to supply energy through any distributing main for the purposes of general supply, the undertakers shall, if the local authority are not themselves the undertakers, give notice to the local authority, and, if the local authority are themselves the undertakers, by public advertisement, by what method they propose to charge for energy supplied through that main; and, where the undertakers have given any such notice, they shall not be entitled to change that method of charging except after one month's notice of the change has been given by them, if the local authority are not themselves the undertakers to the local authority, and in any case to every consumer of energy who is supplied by them from the main.

Maximum prices.

32.—(1) The prices to be charged by the undertakers for energy supplied by them shall not exceed those stated in that behalf in the special order or in the case of a method of charge approved by the [Minister of Transport], such price as the [Minister of Transport] determine[s] on approving the method.

(2) (d) *Provided that if, in a case where the local authority are not themselves the undertakers, either the local authority or the undertakers, at any time after the expiration of seven years after the commencement of the special order, make a representation to the [Minister of Transport] that the prices or methods of charge stated in the special order or approved by the [Minister of Transport] ought to be altered, the [Ministry of Transport], after such inquiry as they may think fit, may make an order varying the prices or methods of charge stated in the special order or so approved as aforesaid, or substituting*

(a) As to what amounts to *force majeure* within the meaning of this clause, see *Hackney B. C. v. Doré*, *ante*, p. 4966. Where a corporation had made an agreement for the supply of energy for power purposes, an interim injunction was granted to restrain them from discontinuing or curtailing the supply on the ground of the enhanced cost of production consequent on the war (*Taylor v. West Bromwich Corporation* (1916), 38 M. C. C. 13). And see note (a), *post*, p. 4969.

(b) See the Electric Lighting Act, 1882, ss. 19—21, *ante*, pp. 4654, 4655, and notes, and s. 42, Electricity (Supply) Act, 1926, Vol. V., *post*. Orders authorising municipal electrical undertakings now frequently contain what is known as the Bermondsey clause. See *The Times*, June 29th, 1904.

(c) Repealed by s. 22 Electricity (Supply) Act, 1922, Vol. V., *post*.

(d) A new sub-section making three years the ordinary period of revision of prices and allowing representations by undertakers, consumers, local authorities not undertakers and in certain cases in the county of London the London County Council has been substituted for this sub-section by s. 22 (2), Electricity (Supply) Act, 1922. The new provision is set out; Vol. V. and 7 Halsbury's Statutes 789.

other prices or methods of charge in lieu thereof, and the prices or methods of charge so varied or substituted shall have effect on and after such day as may be mentioned in the order, as if they had been stated in the special order: Provided also that the prices and methods of charge for the time being in force may be altered in like manner at any time after the expiration of any or every period of seven years after they were last altered.

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33. Subject to the provisions of the special order and of the principal Act, and to the right of the consumer to require that he shall be charged according to some one or other of the methods above mentioned, the undertakers may make any agreement with a consumer as to the price to be charged for energy, and the mode in which those charges are to be ascertained, and may charge accordingly (a). Other charges by agreement.

34. Where the local authority are not themselves the undertakers, the price to be charged by the undertakers and to be paid to them for all energy supplied to the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the local authority and the undertakers, and, in case of difference, shall be determined by arbitration, regard being had to the circumstances of the case and the distributing or other mains (if any) which may have to be laid for the purpose, and the prices charged to ordinary consumers in the district. Price to public lamps.

ELECTRIC INSPECTORS.

35.—(1) The local authority, so long as they are not themselves the undertakers, and, while the local authority are themselves the undertakers, the [Minister of Health], on the application of any consumer or of the undertakers, may appoint and keep appointed, one or more competent and impartial person or persons to be electric inspectors under the special order (b). Appointment of electric inspectors.

(2) If, in a case where the local authority are not themselves the undertakers, no electric inspector is appointed by the local authority, or the inspection of electric lines and works is imperfectly attended to by the local authority, or the local authority themselves become the undertakers for the purposes of the special order, the [Minister of Transport], on the application of any consumer, or of the undertakers, may appoint and keep appointed, one or more competent and impartial person or persons to be electric inspectors under the special order.

36.—(1) The duties of an electric inspector under the special order shall be as follows:— Duties of electric inspectors.

- (a) The inspection and testing, periodically and in special cases, of the undertakers' electric lines and works and the supply of energy given by them;
- (b) *The certifying and examination of meters* (c): and
- (c) Such other duties in relation to the undertaking as may be required of him under the provisions of the special order or of the [Ministry of Transport] regulations.

(a) If persons who are not entitled to require a supply under the Act make an agreement with the undertakers for a supply of electrical energy, they may bring an action against the undertakers to recover damages for an alleged breach of the agreement, there being no clear words in the statute confining the remedy to proceedings to recover a penalty under clause 30, *ante*, p. 4967 (*Morris and Bastert, Ltd. v. Loughborough Corporation*, [1908] 1 K. B. 205; 71 J. P. 521; 20 Digest 204, 31). See also *Taylor v. West Bromwich Corporation*, *ante*, p. 4968.

See also *Bourne & Hollingsworth v. Marylebone B. C.* (1908), 72 J. P. 306; 24 T. L. R. 613; 20 Digest 204, 32.

An agreement for a two-part tariff may be made under this clause, which is not a power conferred for use in exceptional cases only (*Att.-Gen. v. Wimbledon Corporation*, [1940] Ch. 180; [1940] 1 All E. R. 76; Digest Supp.).

As to stamp duty, see the Electric Lighting Act, 1909, s. 19, *post*, p. 5102.

(b) Where a dispute arises between the undertakers and a consumer as to whether a meter is not in proper order for correctly registering the amount of electricity supplied such dispute is to be determined under clause 57, *post*, p. 4974, by the inspector appointed under the clause. If no inspector has been appointed, no cause of action arises against the consumer for electricity supplied (*Hendon Electric Supply Co., Ltd. v. Banks* (1917), 82 J. P. 228; 87 L. J. K. B. 790; 20 Digest 209, 58).

(c) The words in italics were repealed by the Electricity Supply (Meters) Act, 1936, s. 5 (2), Vol. V. and 29 Halsbury's Statutes 136.

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(2) The local authority, with the approval of the [Minister of Transport], or the [Minister of Transport], if the inspector is appointed by [him], may prescribe the manner in which and the times at which any such duties are to be performed by an electric inspector, and also the fees to be taken by him, and those fees shall be accounted for and applied as may be directed by the local authority or the [Minister of Transport], as the case may be.

Remuneration
of electric
inspectors.

37.—(1) The local authority may pay to any electric inspector appointed by them under the special order such reasonable remuneration (if any) as they may determine, and that remuneration may be in addition to, or in substitution for, any fees directed to be paid to electric inspectors in respect of their duties under the special order or the [Ministry of Transport] regulations, according as the local authority determine.

(2) Where the local authority are themselves the undertakers, they shall pay to every electric inspector appointed under the provisions of the special order such reasonable remuneration (if any) as may be determined by the [Minister of Transport], and that remuneration may be in addition to, or in substitution for, any fees which are directed to be paid to electric inspectors for services rendered by them under the special order or the [Ministry of Transport] regulations, as may be settled by [the Minister]; and where any such remuneration is settled to be in substitution for fees, any fees payable by any party other than the undertakers, shall, in lieu of being paid to the electric inspector for his own use, be due and paid to him on behalf and for the use of the undertakers, and shall be carried by them to the credit of the local rate.

Notice of
accidents and
inquiries by
[Minister of
Transport].

38.—(1) The undertakers shall send to the [Minister of Transport] notice of any accident by explosion, or fire, and also of any other accident of such kind as to have caused, or to be likely to have caused, loss of life, or personal injury which has occurred in any part of the undertakers' works or their circuits, or in connection with those works or circuits, and also notice of any loss of life or personal injury occasioned by any such accident. The notice shall be sent by the earliest practicable post after the accident occurs, or, as the case may be, after the loss of life or personal injury becomes known to the undertakers (a).

If the undertakers fail to comply with the provisions of this sub-section they shall be liable, for each default, to a penalty not exceeding twenty pounds.

(2) The [Minister of Transport] may also, if [he] deem[s] it necessary, appoint any electric inspector or other fit person to inquire and report as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with the undertakers' works, whether notice of the accident has or has not been received from the undertakers, or as to the manner and extent in and to which the provisions of the special order and the principal Act, and of the [Ministry of Transport] regulations, so far as those provisions affect the safety of the public, have been complied with by the undertakers; and any person appointed under this section, not being an electric inspector, shall for the purposes of his appointment have all the powers of an electric inspector under the special order.

TESTING AND INSPECTION.

Testing of
mains.

39. On the occasion of the testing of any main of the undertakers reasonable notice thereof shall be given to the undertakers by the electric inspector, and the testing shall be carried out at such suitable hours as, in the opinion of the inspector, will least interfere with the supply of energy by the undertakers, and in such manner as the inspector thinks expedient, but, except under the provisions of an order made in each case in that behalf by the [Minister of Transport], he shall not be entitled to have access to or interfere with the mains of the undertakers at any points other than those at which the undertakers have reserved for themselves access to the said mains: Provided that the undertakers shall not be held responsible for any interruption in the supply of energy which may be occasioned by or required by the inspector for the purpose of any such testing as aforesaid. Provided also that the testings shall not be made in regard to any particular portion of a main oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the [Minister of Transport].

(a) As to the responsibility of the undertakers, see clause 77, *post*, p. 4979.

40. An electric inspector, if and when required to do so by any consumer, shall, on payment by the consumer of the prescribed fee, test the variation of electric pressure at the consumer's terminals, or make such other inspection and testing of the service lines, apparatus, and works of the undertakers upon the consumer's premises as may be necessary for the purpose of determining whether the undertakers have complied with the provisions of the special order and the [Ministry of Transport] regulations. **Schedule.**

Testing of works and supply on consumer's premises.

41.—(1) Where the local authority are not themselves the undertakers, the undertakers shall at such places, within a reasonable distance from a distributing main, establish at their own cost and keep in proper condition such reasonable number of testing stations, as the local authority think proper and sufficient for testing the supply of energy by the undertakers through the main, and shall place thereat proper and suitable instruments of a pattern to be approved by the [Minister of Transport], and shall connect those stations by means of proper and sufficient electric lines with the mains, and supply energy thereto for the purpose of the testing. **Undertakers, not being local authority, to establish testing stations.**

(2) If any dispute arises between the local authorities and the undertakers as to whether the number of the testing stations and the distance from the main at which they are established is reasonable or excessive, or as to any excessive or improper use of energy for the testing, or as to the performance by the undertakers of their duties under this section, that dispute shall be determined by arbitration.

(3) Where the local authority are themselves the undertakers, a court of summary jurisdiction may upon the application of any ten consumers direct the undertakers, at their own cost, to establish at such places, within a reasonable distance from a distributing main, and keep in proper condition, such reasonable number of testing stations, as the court think proper and sufficient for testing the supply of energy by the undertakers through the main, and thereupon (a) the undertakers shall establish such testing places, and provide thereat such proper and suitable instruments of a pattern to be approved by the [Minister of Transport] as the court direct, and they shall connect those stations by means of proper and sufficient electric lines with the mains, and supply energy thereto for the purpose of the testing.

42. The undertakers shall set up and keep upon all premises from which they supply energy by any distributing mains such suitable and proper instruments of such pattern and construction as may be approved or prescribed by the [Minister of Transport], and shall take and record, and keep recorded, such observations as the [Minister of Transport] may prescribe, and any observations so recorded shall be receivable in evidence. **Undertakers to keep instruments on their premises.**

43.—(1) The undertakers shall keep in efficient working order all instruments which they are required by or under the special order to place, set up, or keep at any testing station or on their own premises, and any electric inspector appointed under the special order may examine and record the readings of those instruments, and any readings so recorded shall be receivable in evidence. **Readings of instruments to be taken.**

(2) Where the local authority are not themselves the undertakers, the examinations and readings under this section must be made at such times and in such manner as may be directed by the authority by whom the inspector is appointed.

44. Any electric inspector appointed under the special order shall have the right to have access at all reasonable hours to the testing stations and premises of the undertakers for the purpose of testing the electric lines and instruments of the undertakers, and ascertaining if they are in order, and in case they are not in order he may require the undertakers forthwith to have them put in order. **Electric inspector may test undertakers' instruments.**

45. The undertakers may, if they think fit, on each occasion of the testing of any main or service line, or the testing or inspection of any instruments of the undertakers by any electric inspector, be represented by some officer or other agent, but that officer or agent shall not interfere with the testing or inspection. **Representation of undertakers at testings.**

(a) There seems to be no right of appeal, even from the refusal of the application by the court of summary jurisdiction.

Schedule.

Undertakers
to give facilities
for testing.

46. The undertakers shall afford all facilities for the proper execution of the special order with respect to inspection and testing and the readings and inspection of instruments, and shall comply with all the requirements of or under the special order in that behalf; and in case the undertakers make default in complying with any of the provisions of this section they shall be liable in respect of each default to a penalty not exceeding five pounds, and to a daily penalty not exceeding one pound.

Report of
results of
testing.

47.—(1) Every electric inspector shall, on the day immediately following that on which any testing has been completed by him under the special order, make and deliver a report of the results of his testing to the authority or person by whom he was required to make the testing, and to the undertakers, and that report shall be receivable in evidence.

(2) If the undertakers or any such authority or person are or is dissatisfied with any report of any electric inspector, they or he may appeal to the [Minister of Transport] against the report, and thereupon the [Minister of Transport] shall inquire into and decide upon the matter of the appeal, and [his] decision shall be final and binding on all parties.

Expenses of
electric
inspector.

48.—(1) Save as otherwise provided by the special order or by the [Ministry of Transport] regulations, all fees and reasonable expenses (a) of an electric inspector shall, unless agreed be ascertained by a court of summary jurisdiction, or (where the inspector is appointed by them) by the [Minister of Transport], and shall be paid by the undertakers, and if a local authority are the undertakers may be recovered summarily as a civil debt (b).

(2) Provided that where the report of an electric inspector, or the decision of the [Minister of Transport], shows that any consumer was guilty of any default or negligence, the fees and expenses shall, on being ascertained as above mentioned, be paid by the consumer as the court or the [Minister], by whom the fees are ascertained, having regard to the report or decision, direct, and may be recovered summarily as a civil debt.

(3) Provided also, that in any proceedings for penalties under the special order the fees and expenses of an electric inspector incurred in connection with the proceedings shall be payable by the complainant or defendant as the court direct.

METERS.

Meters to be
used except by
agreement.

49 (c). *The amount of energy supplied by the undertakers to any ordinary consumer under the special order, or the electrical quantity contained in the supply (according to the method by which the undertakers elect to charge), hereinafter referred to as "the value of the supply," shall, except as otherwise agreed (d) between the consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of the special order.*

Meter to be
certified.

50 (c). *A meter shall be considered to be duly certified under the provisions of the special order if it be certified by an electric inspector appointed under the special order to be a correct meter, and to be of some construction and pattern, and to have been fixed and to have been connected with the service lines in some manner approved by the*

(a) That is, expenses specifically incurred by an electric inspector in making tests and inspections, but not salary appointed to him, nor the general expenses of his laboratory and staff (*Crawford v. City of London Electric Lighting Co.* (1898), 67 L. J. Q. B. 942; 78 L. T. 841; 20 Digest 214, 89); and compare s. 49 of the City of London Electric Lighting Order, 1899, confirmed by Electric Lighting Order Confirmation (No. 20) Act, 1899.

(b) That is under ss. 6 and 35 of the S. J. A., 1879 (11 Halsbury's Statutes 325, 342).

(c) As to clauses 49, 50, 51, 53, see s. 11 of the Electric Lighting Act, 1909, *post*, p. 5100, which in effect repealed them and substituted new sections contained in the schedule thereto. The substitution takes effect "subject to such adaptations (if any) as may be necessary," even in the case of Acts and Orders passed or confirmed before the Act of 1909, *post*, p. 5096. As regards clauses 50, 51, see also the Electricity Supply (Meters) Act, 1936, s. 1 (4); Vol. V. and 29 Halsbury's Statutes 133, under which the powers of electricity inspectors under these sections are transferred to meter examiners.

(d) See *Gravesend and Northfleet Electric Tramways, Ltd. v. Gravesend Corporation* (1910), 74 J. P. 156; 8 L. G. R. 445; 20 Digest 208, 57.

[Minister of Transport], and every such meter is hereinafter referred to as a "certified meter": Provided that where any alteration is made in any certified meter, or where any meter is unfixed or disconnected from the service lines, that meter shall cease to be a certified meter unless and until it is again certified as a certified meter under the provisions of the special order.

Schedule.

51 (a). An electric inspector, on being required to do so by the undertakers or by any consumer, and on payment of the prescribed fee (b) by the party so requiring him, shall examine any meter intended for ascertaining the value of the supply, and shall certify it as a certified meter if he considers it entitled to be so certified.

Inspector to certify meter.

52. Where the value of the supply is under the special order required to be ascertained by means of an appropriate meter, the undertakers shall, if required by any consumer, supply him with an appropriate meter, and shall, if required, fix it upon the premises of the consumer and connect the service lines therewith and procure the meter to be duly certified under the provisions of the special order, and for those purposes may authorise and empower any officer or person to enter upon the premises at all reasonable times and execute all necessary works and do all necessary acts; provided that previously to supplying any such meter the undertakers may require the consumer to pay to them a reasonable sum in respect of the price of the meter, or to give security therefor, or (if he desires to hire the meter) may require him to enter into an agreement for the hire of the meter as hereinafter provided.

Undertakers to supply meters if required to do so.

53 (a). No consumer shall connect any meter used or to be used under the special order for ascertaining the value of the supply with any electric line through which energy is supplied by the undertakers, or disconnect any such meter from any such electric line, unless he has given to the undertakers not less than forty-eight hours' notice in writing of his intention to do so, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.

Meters not to be connected or disconnected without notice.

54.—(1) Every consumer shall at all times at his own expense keep all meters belonging to him (c), whereby the value of the supply is to be ascertained, in proper order for correctly registering the value, and in default of his so doing the undertakers may cease to supply energy through the meter.

Consumer to keep his meter in proper order

(2) The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times. Provided that all reasonable expenses of and incident to any such taking off, removing, testing, inspecting, and replacing, and the procuring the meter to be again duly certified where the re-certifying is thereby rendered necessary, shall, if the meter is found to be not in proper order, be paid by the consumer, but if it is found to be in proper order all expenses connected therewith shall be paid by the undertakers.

55. The undertakers may let for hire any meter for ascertaining the value of the supply, and any fittings thereto, for such remuneration in money and on such terms with respect to the repair of the meter and fittings, and for securing the safety and return to the undertakers of the meter and fittings, as may be agreed upon between the hirer and the undertakers, or, in case of difference, determined by the [Minister of Transport], and that remuneration shall be recoverable by the undertakers summarily as a civil debt (d).

Power to the undertakers to let meters.

56. The undertakers shall, unless the agreement for hire otherwise provides, at all times, at their own expense, keep all meters let for hire by them to any consumer, whereby the value of the supply is ascertained, in proper order for correctly registering that value, and in default of their doing so the consumer shall not be liable to pay rent for the meters during such time as the default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times: Provided that the expense of procuring any such meter to be again duly certified, where that re-certifying is thereby rendered necessary, shall be paid by the undertakers

Undertakers to keep meters let for hire in repair.

(a) See note (c), *ante*, p. 4972.

(b) Prescribed under clause 36 (2), *ante*, p. 4970.

(c) As to meters hired from the undertakers, see clauses 55, 56, *supra*.

(d) That is, under ss. 6 and 35 of the S. J. A., 1879 (11 Halsbury's Statutes 325, 342).

Schedule.

Differences as to correctness of meter to be settled by inspector.

57. If any difference arises between any consumer and the undertakers as to whether any meter, whereby the value of the supply is ascertained (whether belonging to the consumer or to the undertakers), is or is not in proper order for correctly registering the value, or as to whether that value has been correctly registered in any case by any meter, that difference shall be determined upon the application of either party by an electric inspector or, where the local authority are the consumers, by an inspector to be appointed by the [Minister of Transport], and that inspector shall also order by which of the parties the costs of and incidental to the proceedings before him shall be paid, and the decision of the inspector shall be final and binding on all parties (a).

Subject as aforesaid, the register of the meter shall be conclusive evidence (b) in the absence of fraud of the value of the supply.

Undertakers to pay expenses of providing new meters where method of charge altered.

58. Where any consumer who is supplied with energy by the undertakers from any distributing main is provided with a certified meter for the purpose of ascertaining the value of the supply and the undertakers change the method of charging for energy supplied by them from the main, the undertakers shall pay to that consumer the reasonable expenses to which he may be put in providing a new meter for the purpose of ascertaining the value of the supply according to the new method of charging, and those expenses may be recovered by the consumer from the undertakers summarily as a civil debt (c).

Undertakers may place meters to measure supply or to check measurement.

59. In addition to any meter which may be placed upon the premises of any consumer to ascertain the value of the supply, the undertakers may place upon his premises such meter or other apparatus as they may desire for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer or the number of hours during which the supply is given, or the maximum power taken by the consumer, or any other quantity or time connected with the supply: Provided that the meter or apparatus shall be of some construction and pattern and shall be fixed and connected with the service lines in some manner approved by the [Minister of Transport], and shall be supplied and maintained entirely at the cost of the undertakers, and shall not, except by agreement, be placed otherwise than between the mains of the undertakers' and consumer's terminals.

MAPS.

Map of area of supply to be made.

60.—(1) The undertakers shall forthwith after commencing to supply energy under the special order cause a map to be made of the area of supply, and shall cause to be marked thereon the line and depth below the surface of all their then existing mains, service lines, and other underground works and street boxes, and shall once in every year cause that map to be duly corrected so as to show the then existing lines. The undertakers shall also, if so required by the [Minister of Transport] or the Postmaster-General, cause to be made sections showing the level of all their existing mains and underground works other than service lines. The said map and sections shall be made on such scale or scales as the [Minister of Transport] prescribe.

(2) Every map and section so made or corrected, or a copy thereof, marked with the date when it was made or last corrected, shall be kept by the undertakers at their principal office within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and those applicants may take copies of it or any part thereof. The undertakers may demand and take from every such applicant such fee not exceeding one shilling for each inspection of the map, section, or copy, and such further fee not exceeding five shillings for each copy of it, or any part thereof, taken by the applicant, as they prescribe.

(a) If no inspector has been appointed the undertakers cannot in case of dispute recover the value of electricity consumed. See *Hendon Electric Supply Co. v. Banks*, ante, p. 4969. The powers under this section are transferred from electricity inspectors to meter examiners by the Electricity Supply (Meters) Act, 1936, s. 1 (4), Vol. V. and 29 Halsbury's Statutes 133; and by *ibid.*, s. 3 (1), Vol. V. and *op. cit.* 135, this section is excluded in certain cases from the transitional provisions as to existing meters.

(b) Compare the Gasworks Clauses Act, 1871, s. 20, ante, p. 4312, as to registers of gas meters.

(c) That is, under ss. 6 and 35 of the S. J. A., 1879; 11 Halsbury's Statutes 325, 342.

(3) The undertakers shall, if required by the [Minister of Transport] or the Postmaster-General, or, where the local authority are not themselves the undertakers, by the local authority, supply to them or him a copy of any such map or section and cause that copy to be duly corrected so as to agree with the original or originals thereof as kept for the time being at the office of the undertakers.

Schedule.

(4) If the undertakers fail to comply with any of the requirements of this section they shall for each default be liable to a penalty not exceeding ten pounds, and to a daily penalty not exceeding two pounds.

NOTICES, ETC.

61. Notices, orders, and other documents under the special order may be in writing or in print, or partly in writing and partly in print, and where any notice, order, or document requires authentication by the local authority, the signature thereof by the clerk or surveyor to the local authority shall be sufficient authentication. Notices, etc. may be printed or written.

62.—(1) Any notice, order, or document required or authorised to be served upon any body or person under the special order or the principal Act may be served by being addressed to that body or person, and being left or transmitted through the post to the following addresses respectively: Service of notices, etc.

- (a) in the case of the [Minister of Transport], the [Ministry of Transport].
- (b) in the case of the Postmaster-General, the General Post Office;
- (c) in the case of any county council, the office of that council;
- (d) in the case of any local authority, the office of that local authority;
- (e) in the case of the undertakers, where the undertakers are not a local authority, the registered office of the undertakers;
- (f) in the case of a company having a registered office, at that registered office, and in the case of a company having an office or offices, but no registered office, the principal office of that company;
- (g) in the case of any other person, the usual or last-known place of abode of that person.

(2) A notice, order, or document by this Schedule required or authorised to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises) without further name or description.

(3) A notice, order, or document by the special order required or authorised to be served on the owner or occupier of premises may be served by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by fixing it on some conspicuous part of the premises.

(4) Subject to the provisions of the special order as to cases of emergency, where the interval of time between the service of any notice or document under the provisions of the special order and the execution of any works, or the performance of any duty or act, is less than seven days, the following days shall not be reckoned in the computation of that time: that is to say, Sunday, Christmas Day, Good Friday, any bank holiday under and within the meaning of the Bank Holiday Act, 1871, and any Act amending that Act, and any day appointed for public fast, humiliation, or thanksgiving. 34 & 35 Vict. c. 17.

REVOCATION OF SPECIAL ORDER.

63. If the [Minister of Transport], in any case where a local authority are not the undertakers, at any time after the commencement of the special order, have reason to believe that the undertakers have made any default in executing works or supplying energy in accordance with the provisions of that order, and that that default is in consequence of the insolvency of the undertakers, and that by reason of that insolvency the undertakers are unable fully and efficiently to discharge the duties and obligations imposed upon them by that order, the [Minister of Transport] may after such inquiry as they may think necessary, and after considering any representations of the local authority, revoke that order as to the whole or (with the consent of the undertakers) as to any part of the area of supply. Revocation of order where undertakers are insolvent.

Schedule.

Revocation of order where undertaking cannot be carried on with profit.

64. If in any case where a local authority are not the undertakers, the undertakers at any time after the commencement of the special order represent to the [Minister of Transport] that the undertaking cannot be carried on with profit, and ought to be abandoned, the [Minister of Transport] shall inquire into the truth of the representation, and if upon that inquiry they are satisfied of the truth of the representation they may, if in their discretion they think fit, revoke the special order as to the whole or (with the consent of the undertakers and of the local authority) as to any part of the area of supply.

Revocation where local authority are undertakers and works are not executed.

65. If in a case where the local authority are themselves the undertakers, the [Minister of Transport], at any time after the commencement of the special order, have reason to believe that the undertakers have made default in executing works or supplying energy in accordance with the provisions of the special order, the [Minister of Transport] may, after such inquiry as they may think necessary, revoke the special order as to the whole or (with the consent of the undertakers) any part of the area of supply upon such terms as the [Minister of Transport] think just.

Revocation of order with consent.

66. In addition to any other powers which the [Minister of Transport] may have in that behalf, they may revoke the special order at any time with the consent and concurrence of the undertakers, and, where the local authority are not themselves the undertakers, also of the local authority upon such terms as the [Minister of Transport] think just.

Provisions where order revoked.

67. If the [Minister of Transport], in any case where the local authority are not themselves the undertakers, at any time revoke the special order as to the whole or any part of the area of supply, under any of the provisions of the special order, the following provisions shall have effect :

- (a) The [Minister of Transport] shall serve a notice of the revocation upon the undertakers and upon the local authority, and shall in that notice fix a date at which the revocation shall take effect, and from and after that date all the powers and liabilities of the undertakers under the special order or this Act, for the supply of energy within such area. or part thereof as aforesaid, shall absolutely cease and determine.
- (b) Within two months after the service of the notice by the [Minister of Transport] upon the local authority, the local authority, if they think fit, may by notice in writing require the undertakers to sell, and thereupon the undertakers shall sell, to them so much of the undertaking or such part thereof as aforesaid as is within the district of the local authority, upon terms of paying the then value of all land, buildings, works, materials, and plant of the undertakers suitable to and used by them for the purposes of the undertaking or such part thereof as aforesaid, that value being agreed or estimated in manner directed by the Electric Lighting Act, 1888, in the case of purchases effected by the local authority under section two of that Act (a).
- (c) Where any purchase is so effected, the undertaking, or part thereof so purchased, shall vest in the local authority, freed from any debts, mortgages, or similar obligations of the undertakers, or attaching to the undertaking; and the revocation of the special order, as to the whole of the area of supply, or such part thereof as aforesaid, shall extend only to the revocation of the rights, powers, authorities, duties, and obligations of the undertakers from whom the undertaking, or such part thereof as aforesaid, is purchased in relation to the supply of energy within that area or part thereof, and, save as aforesaid, the special order shall remain in full force within that area or part thereof in favour of the local authority, by whom the undertaking or part thereof is purchased as aforesaid.
- (d) Where no purchase has been effected under the preceding provisions of this section, the local authority, and any body or person who may be liable to repair any street or part of a street in which any works of the undertaker have been placed, may (subject however to any agreement between the local authority or that body or person and the undertakers providing for

the removal of those works by the undertakers) forthwith remove those works with all reasonable care, and the undertakers shall pay to the local authority, or other such body or person as aforesaid, such reasonable costs of the removal, and of the reinstatement of the street or part of a street as may be specified in a notice to be served on the undertakers by the local authority or other body or person, or (if so required by the undertakers, within one week after the service of the notice upon them) as may be determined by arbitration.

Schedule.

If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of the notice, or the delivery of the award of the arbitrator (as the case may be) the local authority, or other such body or person as aforesaid may, without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid, either by public auction or private sale, and for such sum or sums and to such person or persons as they may think fit; and may, out of the proceeds of the sale, pay and reimburse themselves the amount of the costs so specified or settled as aforesaid and of the costs of sale and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

- (e) In case the local authority or any body or person may be entitled to compensation for any damage sustained by them by reason or in consequence of the execution of any works within such area, or part thereof as aforesaid, or the exercise of any powers granted by the special order to the undertakers, or for any expenses to which that local authority, body, or person may have been put in removing any works of the undertakers within the area, or part thereof, under the provisions of the special order, that compensation shall be a first charge on any money that may have been deposited or secured by the undertakers under the provisions of the special order in respect of that area, or part thereof, and which may not have been repaid or released by the undertakers, and that money shall be applied rateably in satisfying those claims, and in every such case the amount of compensation to be paid in respect of the various claims and the persons to whom it is to be paid, shall be determined by arbitration.

68.—(1) If the [Minister of Transport], in a case where the local authority are themselves the undertakers, at any time revoke the special order as to the whole or any part of the area of supply, any persons who may be liable to repair any street or part of a street within that area or part thereof in which any works of the undertakers have been placed, may forthwith remove those works with all reasonable care, and the undertakers shall pay to those persons such reasonable costs of the removal as are specified in a notice to be served on the undertakers by those persons, or if so required by the undertakers within one week after the service of the notice upon them as may be determined by arbitration.

Provisions where local authority are undertakers and order is revoked.

(2) If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of such notice or the delivery of the award of the arbitrator (as the case may be), such persons as aforesaid may without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid either by public auction or private sale, and for such sum or sums and to such person or persons as they think fit, and may out of the proceeds of the sale pay and reimburse themselves the amount of the costs so specified or determined as aforesaid, and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

GENERAL.

69.—(1) If at any time it is established to the satisfaction of the [Minister of Transport]—

Remedying of system and works.

- (a) that the undertakers are supplying energy otherwise than by means of a system which has been approved by the [Minister of Transport] or (except in accordance with the provisions of the special order) have permitted any

Schedule.

part of their circuits to be connected with earth or placed any electric line above ground ; or

- (b) that any electric lines or works of the undertakers are defective, so as not to be in accordance with the provisions of the special order or the [Minister of Transport] regulations ; or
- (c) that any work of the undertakers or their supply of energy is attended with danger to the public safety, or injuriously affects any telegraphic line of the Postmaster-General.

the [Minister of Transport] may by order specify the matter complained of, and require the undertakers to abate or discontinue it within such period as is therein limited in that behalf, and if the undertakers make default in complying with the order they shall be liable to a penalty not exceeding twenty pounds for every day during which the default continues.

(2) The [Ministry of Transport] may also if they think fit by the same or any other order forbid the use of any electric line or work as from such date as may be specified in that behalf until the order is complied with, or for such time as may be so specified, and if the undertakers make use of any such electric line or work while the use thereof is so forbidden they shall be liable to a penalty not exceeding one hundred pounds for every day during which the user continues.

(3) In any case of non-compliance with an order under this section, whether a pecuniary penalty has been recovered or not the [Ministry of Transport], if in their opinion the public interest so requires, may revoke the special order on such terms as they think just.

Publication of regulations.

70.—(1) The [Ministry of Transport] regulations for the time being in force shall within one month after they have come into force, as made or last altered, be printed at the expense of the undertakers, and a true copy thereof, certified by or on behalf of the undertakers, shall be kept by the undertakers at their principal office within the area of supply, and supplied to any person demanding them at a price not exceeding sixpence for each copy, and where the local authority are not themselves the undertakers, a like copy shall also be forthwith served upon the local authority.

(2) If the undertakers make default in complying with the provisions of this section they shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding five pounds.

Nature and amount of security.

71. Where any security is required under the special order to be given to or by the undertakers, that security may be by way of deposit or otherwise, and of such amount as may be agreed upon between the parties, or as in default of agreement may be determined, on the application of either party, by a court of summary jurisdiction, and that court may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the court shall be final and binding on all parties : Provided that where any such security is given by way of deposit the party to whom the security is given shall pay interest at the rate of four per centum per annum on every sum of ten shillings so deposited for every six months during which it remains in their hands.

Proceedings of [Minister of Transport].

72.—(1) All things required or authorised under the special order to be done by, to, or before the [Minister of Transport], may be done by, to, or before the [Minister] or secretary or assistant secretary of the [Ministry].

(2) All documents purporting to be orders made by the [Minister of Transport] and to be sealed with the seal of the [Ministry] ; or to be signed by a secretary or assistant secretary of the [Ministry], or by any person authorised in that behalf by the [Minister], shall be received in evidence, and shall be deemed to be those orders without further proof, unless the contrary is shown.

(3) A certificate, signed by the [Ministry of Transport], that any order made or act done is the order or act of the [Minister], shall be conclusive evidence of the order or act so certified.

Approval or consent of [Minister of Transport].

73.—(1) Where the special order provides for any consent or approval of the [Minister of Transport], the [Minister] may give that consent or approval subject to terms or conditions, or may withhold [his] consent or approval, as in [his] discretion [he] may think fit.

(2) All costs and expenses of or incident to any approval, consent, certificate, or order of the [Minister of Transport] or of any inspector or person appointed by the [Minister of Transport], including the cost of any inquiry or tests for the purpose of determining whether the same should be given or made, to such an amount as the [Minister of Transport] certify to be due, shall be borne and paid by the applicant therefor.

Schedule.

Provided that where the approval is given by the [Minister of Transport] to any plan, pattern, or specification, they may require such copies of the plan, pattern, or specification as they think fit to be prepared and deposited at their office at the expense of the applicant, and may, as they think fit, revoke any approval so given, or permit the approval to be continued, subject to such modifications as they think necessary.

74. Where the [Minister of Transport]—

- (1) upon the application of the undertakers, give any approval or grant any extension of any time limited for the performance of any duties by the undertakers; or
 - (2) in a case where the local authority are not themselves the undertakers, revoke the special order upon the application of the local authority or the undertakers as to the whole or any part of the area of supply; or
 - (3) in a case where the local authority are themselves the undertakers revoke the special order as to the whole or any part of the area of supply,
- notice that the approval has been given, or the extension of time granted, or the revocation made, shall, if the [Minister of Transport] so direct, be published by public advertisement once at least in each of two successive weeks in some one and the same local newspaper by the undertakers, or, where the application for revocation has been made by the local authority, by the local authority.

Notice of approval of [Minister of Transport], etc., to be given by advertisement.

75. If, in a case where the local authority are not themselves the undertakers, any application is made to the [Minister of Transport] to extend any time limited for the performance of any duties by the undertakers, notice of the application shall be served on the local authority by the undertakers, and an opportunity shall be given to the local authority to make representations or objections with reference thereto

Notice of application for extension of time, etc., to be given to local authority.

76.—(1) All penalties, fees, expenses, and other moneys recoverable under the special order, or under the [Minister of Transport] regulations, the recovery of which is not otherwise specially provided for, may be recovered summarily in manner provided by the Summary Jurisdiction Acts.

Recovery and application of penalties.

(2) Any penalty recovered on prosecution by an officer of the local authority, in a case where the local authority are not themselves the undertakers, shall, if there is an electric inspector for the time being appointed by the local authority, be paid to that officer and by him to the local authority, and shall be applied in aid of the local rate.

(3) Any penalty recovered on prosecution by any other body or person, or any part thereof, may, if the court so direct, be paid to that body or person.

77. The undertakers shall be answerable for all accidents, damages, and injuries happening through the act or default of the undertakers, or of any person in their employment, by reason of or in consequence of any of the undertakers' works, and shall save harmless all authorities, bodies, and persons by whom any street is repairable, and all other authorities, companies, and bodies collectively and individually, and their officers and servants, from all damages and costs in respect of those accidents, damages and injuries (a).

Undertakers to be responsible for all damages.

78. Nothing in the special order shall prevent the undertakers, in a case where a local authority are not the undertakers, from borrowing money on the security of

As to mortgage

(a) See *Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392; 34 Digest 163, 1271; *Solomons v. Stepney Borough Council* (1905), 60 J. P. 360; 3 L. G. R. 912; 20 Digest 212, 81. Now see further as to the liability of the undertakers for the negligence of contractors employed by them the cases cited in the notes to the P. H. A., 1875, s. 144, ante, p. 4350.

As to the application of this clause to lines across railways, etc., see the Electricity (Supply) Act, 1919, s. 22, post, p. 5256.

Compare Tramways Act, 1870, s. 55, ante, p. 4300, and see notes thereto.

Schedule. mortgages of the undertaking, or shall make the consent or approval of the [Minister of Transport] necessary to the validity or effect of any such mortgage :

Provided that every mortgage of the undertaking shall be deemed to comprise all purchase money which may be paid to the undertakers in the event of any sale or transfer of the undertaking or any part thereof, under section two of the Electric Lighting Act, 1888, or under the special order, and that any mortgage granted by the undertakers shall not be a charge upon the undertaking, or any part thereof, in the event of the undertaking or that part being sold or transferred as aforesaid, and that every mortgage deed granted by the undertakers shall be endorsed with notice to that effect.

Saving for
Postmaster-
General.

79. Nothing in the special order shall affect any right or remedy of the Postmaster-General under the principal Act or the Telegraph Acts, 1863 to 1897, and all provisions contained in the special order in favour of the Postmaster-General shall be construed to be in addition to and not in modification of the provisions of those Acts.

Saving rights
of the Crown
in the
aforeshore.

80. Although any shore, bed of the sea, river, channel, creek, bay, or estuary is included in the area of supply, nothing in the special order shall authorise the undertakers to take, use, or in any manner interfere with any portion of that shore or bed of the sea, or of the river, channel, creek, bay, or estuary, or any right in respect thereof belonging to the Queen's most Excellent Majesty in right of her Crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of her Majesty (which consent the Board of Trade may give), neither shall anything in the special order contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in or enjoyed or exercisable by the Queen's Majesty.

Undertakers
not exempted
from pro-
ceedings for
nuisance.

81. Nothing in the special order shall exonerate the undertakers from any indictment, action, or other proceedings for nuisance in the event of any nuisance being caused or permitted by them (*a*).

(*a*) Compare Gasworks Clauses Act, 1847, s. 29, *ante*, p. 4172; and Gasworks Clauses Act, 1871, s. 9, *ante*, p. 4309, and see notes thereto. A plaintiff when walking in the public highway passed close to an electric lamp-post beside which was a chamber sunk into the street. As he passed, an explosion took place under ground which caused the metal plate to open and a flash to emanate. It was held that the fact of an explosion having happened was *prima facie* evidence of negligence (*Farrell v. Limerick Corporation* (1911), 45 Ir. L. T. 169). But in England at any rate negligence need not be proved. Thus where a municipal corporation supplied electricity under a provisional order under the Electric Lighting Acts, 1882 and 1888, *ante*, pp. 4642, 4700, and containing a clause in the terms of this section, it was held that they were liable in damages for an explosion occasioned by a leakage of electricity from one of their mains which generated a gas escaping into the plaintiff's premises in an adjoining street (*Midwood & Co., Ltd. v. Manchester Corporation*, [1905] 2 K. B. 597; 69 J. P. 348; 20 Digest 212, 76).

The plaintiffs were the owners of electric cables which had been laid under certain public streets. The defendants were the owners of hydraulic mains which had been laid under the same streets under statutory powers. The mains burst in four different places, in each case damaging the plaintiff's cables. No negligence was attributed to the defendants. It was held that the doctrine of *Rylands v. Fletcher* (1868), L. R. 3 H. L. 330; 33 J. P. 70; 20 Digest 210, 72 applies not only to cases in which the dangerous thing has escaped from the defendant's land on to the plaintiff's land and done damage there, but also to cases in which the site of the plaintiff's injury was occupied by him only under a licence and not under any right of property in the soil, and that in the absence of statutory authorisation of the nuisance the defendants were liable for the damage caused by the bursting of their mains, notwithstanding that they had not been guilty of any negligence (*Charing Cross Electricity Supply Co. v. Hydraulic Power Co.*, [1914] 3 K. B. 772; 78 J. P. 305; 36 Digest 189, 315). Cf. *Goodbody v. Poplar Borough Council* (1914), 79 J. P. 218; 20 Digest 211, 75; *Miles v. Forest Rock Granite Co., Ltd.* (1918), 34 T. L. R. 500; 34 Digest 750, 1235; *Belvedere Fish Guano Co. v. Rainham Chemical Works, Ltd.*, [1920] 2 K. B. 487; 84 J. P. 185; affirmed, H. L., [1921] 2 A. C. 466; 36 Digest 192, 332.

The effect of this clause was considered by the Court of Appeal in *Farnworth v. Manchester Corporation*, [1929] 1 K. B. 533; 93 J. P. 73. In the House of Lords it was held that this clause did not apply, but the corporation were none the less held liable for a nuisance caused by the emission of fumes from a generating station, on appeal *sub nom. Manchester Corporation v. Farnworth*, [1930] A. C. 171; 94 J. P. 62; Digest Supp.

82. Nothing in the special order shall exempt the undertakers or their under- **Schedule.**
taking from the provisions of, or deprive the undertakers of the benefits of, any
general Act relating to electricity, or to the supply of, or price to be charged for, **Provisions as to**
energy, which may be passed after the passing of the Act confirming the special general Acts.
order (a).

(a) Clauses 83 and 84 relate to only the application of this Schedule to Scotland and Ireland, and are therefore omitted.

As to the omission of the Appendix, see note (d), *ante*, p. 4954.

* * * * *

THE BODIES CORPORATE (JOINT TENANCY) ACT, 1899.

(62 & 63 VICT. c. 20) (a).

An Act for enabling Bodies Corporate to hold Property in Joint Tenancy.

[9th August, 1899.]

1.—(1) A body corporate shall be capable of acquiring and holding any real or personal property in joint tenancy in the same manner as if it were an individual; and where a body corporate and an individual, or two or more bodies corporate, become entitled to any such property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy, they shall be entitled to the property as joint tenants. Power for corporations to hold property as joint tenants.

Provided that the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions (b) as attach to the acquisition and holding of property by a body corporate in severalty.

(2) Where a body corporate is joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

(a) This statute altered the law as it had existed ever since Litt. ss. 281, 296, 297; Co. Litt. 182, 189 b., 190; 2 Bla. Com. 184; *Bennet v. Holbech* (1672), 2 Saund. 316 a.; *Law Guarantee and Trust Society v. Bank of England* (1890), 24 Q. B. D. 406; 54 J. P. 582; 37 Digest 167, 99. But by s. 264 of the Lunacy Act, 1890 (11 Halsbury's Statutes 106), it had already been enacted that lands acquired for the purposes of that Act might be conveyed where more than one local authority was interested to all the local authorities interested as joint tenants; and by s. 6 of the National Debt (Stockholders Relief) Act, 1892 (16 Halsbury's Statutes 685), that stock [*i.e.* stock transferable in the books of the Bank of England] may be transferred to and held in the names of an individual and a body corporate, or of two or more bodies corporate, and any such holding shall in its relation to the Bank be deemed a joint tenancy.

(b) *E.g.*, in certain cases the necessity for a licence in mortmain. See the Mortmain and Charitable Uses Act, 1888, *ante*, p. 4771, and note (a) thereto.

2. This Act may be cited as "The Bodies Corporate (Joint Tenancy) Act, 1899."

Section 1.

THE COMMONS ACT, 1899.

(62 & 63 VICT. c. 30) (a).

An Act to amend the Inclosure Acts, 1845 to 1882, and the Law relating to Commons and Open Spaces. [9th August, 1899.]

(a) See the Commons Act, 1876, *ante*, p. 4563. See further as to waste lands and commons the provisions of ss. 193 and 194 of the Law of Property Act, 1925; Vol. V. and 15 Halsbury's Statutes 371, 373.

PART I.

REGULATION OF COMMONS.

Power for district council to make scheme for regulation of common.

1.—(1) The council of an urban or rural district (a) may make (b) a scheme for the regulation and management of any common (c) within their district (d) with a view to the expenditure of money (e) on the drainage, levelling, and improvement (f) of the common, and to the making of byelaws (g) and regulations for the prevention of nuisances and the preservation of order on the common.

39 & 40 Vict. c. 56.

(2) The scheme may contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section seven of the Commons Act, 1876 (h).

(3) The scheme shall be in the prescribed (i) form, and shall identify by reference to a plan the common to be thereby regulated, and for this purpose an ordnance survey map shall, if possible, be used.

(a) As to county boroughs, see s. 13, *post*, p. 4984.

(b) As to amending or supplementing schemes, see s. 9, *post*, p. 4984.

(c) For definition of "common," see s. 15, *post*, p. 4984, and as to excepted commons, see s. 14, *post*, p. 4984.

(d) In a case of a common extending into two or more districts the powers of ss. 91—93 of the L. G. A., 1933, *ante*, pp. 854—856, might be useful in relation to a joint scheme.

(e) As to expenses, see ss. 5, 11, and 12, *post*.

(f) This word is not defined, nor is s. 5 of the Commons Act, 1876, *ante*, p. 4565, expressly incorporated.

(g) As to byelaws, see s. 10, *post*, p. 4984.

(h) *Ante*, p. 4565.

(i) See s. 15, *post*, p. 4984. The Ministry of Agriculture and Fisheries have prescribed a form of scheme, and a form of notice of intention to make such scheme, by Commons Regulations, dated 10th August, 1935 (Stat. R. & O., 1935, No. 840), *ante*, p. 2450. As to whether a scheme will be conclusive as to the limits and extent of the common, see *Cook v. Conservators of Mitcham Common*, [1901] 1 Ch. 387; 11 Digest 90, 1089.

Procedure for making scheme.

2.—(1) Not less than three months before the making of a scheme under this Part of this Act the council shall give the prescribed (a) notice of their intention to make it, and shall state thereby where copies of the draft of the scheme may be obtained, and where the plan therein referred to may be inspected. They shall also send to the Board of Agriculture (b) as soon as possible a copy of the draft and plan.

(2) During the three months aforesaid any person may obtain copies of the draft on payment of a sum not exceeding sixpence per copy, and may inspect the plan at the prescribed place, and may make in writing to the Board of Agriculture (b) any objection or suggestion with respect to the scheme or plan.

(3) After the expiration of the said three months the Board of Agriculture (b) shall take into consideration any objections or suggestions so made, and for that purpose may, if they think fit, direct that an inquiry be held by an officer of the Board.

(4) The Board of Agriculture (b) may by order approve of the scheme, subject to such modifications, if any, as they may think desirable, and thereupon the scheme shall have full effect.

Provided that if, at any time before the Board have approved of the scheme, they receive a written notice of dissent either— **Section 2.**

(a) from the person entitled as lord of the manor or otherwise to the soil of the common ; or

(b) from persons representing at least one-third in value of such interests in the common as are affected by the scheme,

and such notice is not subsequently withdrawn, the Board shall not proceed further in the matter (c).

(a) See note (i) to s. 1, *ante*, p. 4982.

(b) The Board of Agriculture has now been superseded by the Minister of Agriculture and Fisheries.

(c) Note the differences from an application for regulation under s. 12 (5) of the Commons Act, 1876, *ante*, p. 4571, and note (c) thereon.

3. The management of any common regulated by a scheme made by a district council under this Part of this Act shall be vested in the district council. Management of regulated common.

4. A rural district council may delegate to a parish council any powers of management conferred by this Part of this Act on the district council in relation to any commons within the parish, and thereupon the Public Health Acts shall apply as if the parish council were a parochial committee (a). Provision for delegation of powers of district council to parish council.

(a) See L. G. A., 1933, ss. 87, 88, *ante*, pp. 851—3. The power of delegation can only be exercised after the scheme is made, as the scheme itself cannot confer rights on a parish council. A rural district council may delegate its powers for a specified period, only resuming them at such time or under such conditions as it may prescribe. The Board of Agriculture and Fisheries were of opinion that the power to make byelaws under a scheme is not a power of management which can be delegated under this section.

5. A parish council may agree to contribute the whole or any portion of the expenses of and incidental to the preparation and execution of a scheme for the regulation and management of any common within their parish (including any compensation paid under this Act) (a). Power for parish council to contribute to expenses.

(a) Certain words, dealing with expenses, were repealed by the L. G. A., 1933, *ante*, p. 735.

6. No estate, interest, or right (a) of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme under this Part of this Act without compensation being made or provided for the same by the council making the scheme, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts (b). Provision for compensation.

(a) The right of maintaining a publichouse sign-post in a spot where it had stood for over forty years was held to be a right of a profitable or beneficial nature within the words of a similar enactment (*Hoare v. Metropolitan Board of Works* (1874), L. R. 9 Q. B. 296 ; 38 J. P. 535 ; 11 Digest 89, 1081). See generally on this subject *Att.-Gen. v. Amhurst* (1879), 23 Sol. J. 443, and judgment in full, *Hunter on Open Spaces*, 2nd ed., App. III., p. 468.

(b) See Lands Clauses Consolidation Act, 1845, s. 68, *ante*, p. 4104. Sections 25—57 of the same Act, *ante*, pp. 4114—4122, provide for settling cases of disputed compensation.

7. A district council may acquire the fee simple or any estate in or any rights in or over any common regulated by a scheme under this Part of this Act by gift or by purchase by agreement, and hold the same without licence in mortmain (a) for the purposes of the scheme, . . . (b). Power for district council to acquire property in regulated common.

(a) See note (a), *ante*, p. 4771.

(b) Certain words, dealing with expenses, were repealed by the L. G. A., 1933, *ante*, p. 735.

Section 8.

Digging of
gravel.
39 & 40 Vict.
c. 56.

Power to
amend scheme.
Provisions as
to byelaws.

8. Section twenty of the Commons Act, 1876 (which relates to the digging of gravel) (a), shall apply to any common regulated by a scheme under this Part of this Act.

(a) *Ante*, p. 4575.

9. The power to make a scheme under this Part of this Act shall include power to amend or supplement any such scheme.

10. The provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six, both inclusive, of the Public Health Act, 1875 (a), and any enactment amending or extending those sections, shall apply to all byelaws made in pursuance of a scheme under this Part of this Act, and any fine imposed by any such byelaw shall be recoverable summarily and be payable to the council in whom the management of the common is vested.

(a) As to procedure for making byelaws, see now L. G. A., 1933, s. 250, *ante*, p. 1104. Sections 16 and 17 of the Commons Act, 1876, *ante*, p. 4574, do not apply to these byelaws.

Expenses.

11.—(1) All expenses incurred by the Board of Agriculture (a) in relation to a scheme under this Part of this Act, and all expenses of and incidental to the preparation and execution of the scheme (including any compensation paid under this Act) (b) shall be paid by the district council.

(2) . . . (c).

(3) A district council may for the purposes of this Act borrow money . . . (c).

(a) Now Minister of Agriculture and Fisheries.

(b) See s. 6, *ante*, p. 4983.

(c) Sub-s. (2), and certain words in sub-s. (3), dealing with expenses and borrowing, were repealed by the L. G. A., 1933, *ante*, p. 735.

Power for urban
district council
to contribute
towards
expenses.

12. The council of any urban district may, with a view to the benefit of the inhabitants of their district, and subject to the approval of the Local Government Board (a), enter into an undertaking with any other council making or having made a scheme under this Part of this Act to contribute any portion of the expenses incurred by that council in executing the scheme.

(a) Now Minister of Health.

Application to
county
boroughs.

13. This Part of this Act shall apply to the council of a county borough in like manner as if that council were the council of an urban district.

Saving for
commons regu-
lated under
other Acts.

14. A scheme under this Part of this Act shall not apply to any common which is or might be the subject of a scheme made under the Metropolitan Commons Acts, 1866 to 1878, or is regulated by a provisional order under the Inclosure Acts, 1845 to 1882, or has been acquired, or managed as an open space, under the powers of the Corporation of London (Open Spaces) Act, 1878, or any Act therein referred to, or is the subject of any private or local and personal Act of Parliament having for its object the preservation of the common as an open-space (a), or is subject to byelaws made by a parish council under section eight of the Local Government Act, 1894 (b).

(a) See the Open Spaces Act, 1906, s. 2, *post*, p. 5016.

(b) This section enables a parish council to exercise with respect to any recreation ground, village green, open space, or public walk which is for the time being under their control or to the expense of which they have contributed, powers similar to those of local authorities under the P. H. A., 1875, s. 164, *ante*, p. 4451, and the P. H. A. A., 1890, s. 44, *post*, p. 4818.

Definitions.

15. In this Part of this Act, unless the context otherwise requires,—

The expression “common” shall include any land subject to be inclosed under the Inclosure Acts, 1845 to 1882, and any town or village green (a);

The expression “prescribed” shall mean prescribed by regulations made by the Board of Agriculture (b).

41 & 42 Vict.
c. cxxvii.

(a) As to town or village greens, see the Commons Act, 1876, s. 29, *ante*, p. 4578, and notes.
 (b) See the Commons Regulations, dated August 10th, 1935 (Stat. R. & O., 1935, No. 840), *ante*, p. 2450. For Board of Agriculture now read Minister of Agriculture and Fisheries.

**Note to
Section 15.**

PART II.

MISCELLANEOUS.

16.—(1) Surplus rents arising from field gardens may, in addition to the purposes for which they are now applicable (a), be applied for any of the purposes for which surplus rents arising from recreation grounds may be applied. Surplus rents from field gardens and recreation grounds.

(2) Surplus rents arising from any field garden or recreation ground may be applied towards the redemption of any land tax, tithe rentcharge, or other charge on the garden or ground.

(a) See the Commons Act, 1876, s. 27, *ante*, p. 4577. The same section regulates the application of surplus rents arising from recreation grounds.

17. [*Amendment of Open Spaces Act, 1887, ante, p. 4699, as to open spaces*] (a).

(a) This section is repealed by s. 23 and the Schedule to the Open Spaces Act, 1906, *post*, p. 5016, other provision having been made by that Act to the like effect.

18. Any provisions with respect to allotments for recreation grounds, field gardens, or other public or parochial purposes contained in any Act relating to inclosure or in any award or order made in pursuance thereof, and any provisions with respect to the management of any such allotments contained in any such Act, order, or award, may, on the application of any district or parish council interested in any such allotment, be dealt with by a scheme of the Charity Commissioners in the exercise of their ordinary jurisdiction, as if those provisions had been established by the founder in the case of a charity having a founder (a). Power to modify provisions as to recreation grounds, etc.

(a) See the Charitable Trusts Act, 1853, ss. 54—59 (2 Halsbury's Statutes 341—343).

The Charity Commissioners are of opinion that the restrictive provisions of s. 19 of the Commons Act, 1876 (*ante*, p. 4575), are not affected by s. 18 of the Commons Act, 1899, and that accordingly the Charity Commissioners are not at liberty to sanction the sale or letting on building lease of any part of an allotment falling within the section first above mentioned. Hunter on Open Spaces, 2nd ed., p. 231, note.

19. Section one hundred and fifty of the Inclosure Act, 1845 (a), shall have effect as if "two successive weeks" were therein inserted instead of "three successive weeks," and as if "one month" were therein inserted instead of "three calendar months." Amendment of s. 118 of 8 & 9 Vict. c.

(a) This section relates to notices of divisions of intermixed lands under s. 148 (2 Halsbury's Statutes 508) and exchanges of inconvenient allotments under s. 149 of the same Act.

20. Where notice has been given of any sitting, whether original or by adjournment, to be held by an officer of the Board of Agriculture (a) under the Metropolitan Commons Acts, 1866 to 1878, that officer may, by notice to be published in such manner as the Board direct, adjourn the sitting without attending for the purpose of the adjournment (b). Amendment of law as to adjournment of meetings.

(a) Now Minister of Agriculture and Fisheries.

(b) For procedure under the Metropolitan Commons Acts, see Hunter on Open Spaces, 2nd ed., pp. 264, 265.

21. (a) *Section twenty of the Metropolitan Commons Act, 1866, is hereby repealed, and the Board of Agriculture shall include in an annual report to Parliament a statement of their proceedings under Part I. of this Act and under the Metropolitan Commons Acts, 1866 to 1878, during the year ending the thirty-first day of December then last past, with such particulars as to their proceedings under the last-mentioned Acts as are required by section twenty-one of the Metropolitan Commons Act, 1866 (b).* Annual report to Parliament. 29 & 30 Vict. c. 122.

**Note to
Section 21.**

(a) The S. L. R. A., 1908 (18 Halsbury's Statutes 1175), repealed the italicised words in s. 21, the opening words of s. 23 and Schedule II. The Acts repealed (as having "been made unnecessary by" or being "inconsistent with subsequent enactments") were the Inclosure Acts, 1756 and 1757, the Inclosure (Consolidation) Act, 1801, the Inclosure Act, 1821, the Common Fields Exchange Act, 1834, the Inclosure Acts, 1836 and 1840, and the Inclosure Act, 1845, ss. 121, 122.

(b) By this section the Minister must, in his annual report, set forth in full every scheme certified by him during the year to which the report relates, and state the grounds of his approval, and the objections (if any) made to it and overruled, and all proceedings had in respect of these objections and the grounds on which they were overruled.

Restrictions
on inclosures
under scheduled
Acts (a).

22.—(1) A grant or inclosure of common purporting to be made under the general authority of any of the Acts mentioned (b) in the First Schedule hereto or any Act incorporating the same, or any provisions thereof, shall not be valid unless it is either—

- (a) specially authorised by Act of Parliament; or
- (b) made to or by any Government Department; or
- (c) made with the consent of the Board of Agriculture (c).

39 & 40 Vict.
c. 56.

(2) The Board of Agriculture (c), in giving or withholding their consent under this section, shall have regard to the same considerations, and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Board before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not.

(a) See also the restrictions on inclosure of commons in s. 194 of the Law of Property Act, 1925; Vol. V. and 15 Halsbury's Statutes 373.

(b) These include the Lands Clauses Consolidation Act, 1845. See ss. 99—107 of that Act as to extinction of commoners' rights, *ante*, pp. 4141—4143.

(c) Now Minister of Agriculture and Fisheries.

Repeal.

23. [*Repeal of Acts in second Schedule.*] (a)

This repeal shall not affect the construction or effect of any local and personal Act of Parliament passed before the commencement of this Act, whereby any provisions of the said enactments are intended to be incorporated.

(a) See note (a) to s. 21, *supra*.

Short title

24. This Act may be cited as "The Commons Act, 1899," and shall be read with the Inclosure Acts, 1845 to 1882.

SCHEDULES.

[S. 22.]

FIRST SCHEDULE.

ENACTMENTS RELATING TO INCLOSURES SUBJECT TO RESTRICTIONS UNDER THE ACT.

Session and Chapter.	Title or Short Title.
43 Eliz. c. 2 . . .	The Poor Relief Act, 1601.
17 Geo. 3, c. 53 . . .	The Clergy Residences Repair Act, 1776.
51 Geo. 3, c. 115 . . .	The Gifts for Churches Act, 1811.
58 Geo. 3, c. 45 . . .	The Church Building Act, 1818.
1 & 2 Will. 4, c. 42 . . .	The Poor Relief Act, 1831.
1 & 2 Will. 4, c. 59 . . .	The Crown Lands Allotments Act, 1831.
5 & 6 Will. 4, c. 69 . . .	The Union and Parish Property Act, 1835.
4 & 5 Vict. c. 38 . . .	The School Sites Act, 1841.
8 & 9 Vict. c. 18 . . .	The Lands Clauses Consolidation Act, 1845.
17 & 18 Vict. c. 112 . . .	The Literary and Scientific Institutions Act, 1854.

[S. 23.]

SECOND SCHEDULE (a).

(a) See note (a) to s. 21, *supra*.

Section 1.

THE TELEGRAPH ACT, 1899.

(62 & 63 VICT. c. 38) (a).

An Act to make further Provisions for the Improvement of Telephonic Communication, and otherwise with respect to Telegraphs. [9th August, 1899.]

* * * * *

2.—(1) Where the council of a borough or an urban district are licensed (b) by the Postmaster-General to provide a system of public telephonic communication, they may . . . (c) borrow money for the purpose . . . (e); and the council may, subject to the provisions of the Telegraph Acts, 1863 to 1897, and of the licence, exercise their powers under the licence throughout the area for which it is granted, although part of that area may be outside the borough or urban district (d).

Payment of expenses of exercise of powers under telephone licences.

(a) In *Att.-Gen. v. Edison Telephone Co. of London* (1880), 6 Q. B. D. 244; 42 Digest 885, I, it was held that the terms "telegrams" and "telegraphs" as used in the Telegraph Acts include telephonic messages and telephones, so that it is necessary for the purpose of setting up telephones and transmitting telephone communications to obtain a licence from the Postmaster-General under s. 5 of the Telegraph Act, 1869 (19 Halsbury's Statutes 252), in order to avoid the infringement of his exclusive privilege under s. 4 of that Act (*op. cit.*). Moreover, the Electric Lighting Act, 1882, *ante*, p. 4642, whilst it authorises local authorities to undertake the supply of electricity in certain cases for certain purposes, excludes from those purposes "the transmission of any telegram" (s. 3 (4), *ante*, p. 4644), and contains in s. 35, *ante*, p. 4659, a special saving for the exclusive privileges of the Postmaster-General. Consequently a licence from him is necessary in all cases where local authorities desire to provide a system of telephonic communication. This Act provides for their expenses when they have obtained such a licence. S. 1 relates merely to the grant of public moneys to the Postmaster-General for the purposes of the Telegraph Acts, and is therefore omitted.

(b) Under s. 5 of the Telegraph Act, 1869.

By s. 5 of the Telegraph Act, 1892 (19 Halsbury's Statutes 284), (1) Where the Postmaster-General has, either before or after the passing of this Act, licensed any company or person to transmit any telegrams within the meaning of the Telegraph Acts, 1863 to 1889 (*op. cit.* 219, 280), he may by the same or any other licence, authorise such company or person (in this Act referred to as "the licensee") during the time and within the area specified in the licence, to exercise the powers which are conferred on the Postmaster-General by the Telegraph Acts, 1863 and 1878 (*op. cit.* 219, 261), and by the provisions of this Act relating to provisional orders, or such of those powers as are specified in the licence, and thereupon the enactments conferring those powers or relating to the exercise thereof, including any penal provisions, shall apply accordingly: (2) Provided as follows:—(a) A licensee shall not exercise any powers under the said enactments except in an urban sanitary district or such area adjoining an urban sanitary district as is described in the licence: (b) Notwithstanding anything in the Telegraph Act, 1878, a licensee shall not exercise any powers under the said enactments without the consent, in London of the county council, and in any urban sanitary district outside London of the urban sanitary authority, and elsewhere of the county council, and shall be subject to any terms and conditions which the county council or urban sanitary authority may attach to any such consent, and shall comply with any regulations of such council or authority from time to time in force in relation to telegraphic lines.

The refusal of their consent by the urban sanitary authority under this section is not a "difference" between that body and the Postmaster-General which may be referred to a stipendiary magistrate or county court judge under s. 4 of the Telegraph Act, 1878 (*op. cit.* 263) (*National Telephone Co. v. Tunbridge Wells Corporation* (1901), 85 L. T. 368, affirming (1900), 64 J. P. 756; 48 W. R. 686; 42 Digest 893, 43). The conditions which the urban authority are entitled to impose must not relate to matters entirely outside the scope of their duty as road authority. For instance, a condition that the wires should not be laid unless the licensees were prepared to provide an improved service at a reduced cost is not within the power of the urban authority to impose (*Postmaster-General v. London Corporation* (1898), 62 J. P. 390; 78 L. T. 120; 42 Digest 892, 35). But in the case of overhead wires they may impose conditions for securing the public safety (*Wandsworth District L. B. v. Postmaster-General* (1884), 4 Ry. & Can. Tr. Cas. 301; 42 Digest

**Note to
Section 2.**

892, 39). The regulations referred to in the latter part of the above section seem to mean byelaws under Part II., ss. 13 *et seq.* of the P. H. A. A., 1890, *ante*, p. 4807, or s. 25 of P. H. A., 1925; Vol. V. and 13 Halsbury's Statutes 1123.

(c) Certain words, dealing with expenses and borrowing, were repealed by the L. G. A., 1933, *ante*, p. 735.

(d) Sub-ss. (2) and (3) relate to Scotland and Ireland only, and are therefore omitted.

**Provisions as to
existing
companies.**

3.—(1) Where any existing company have before the passing of this Act under a licence from the Postmaster-General, provided a system of public telephonic communication in any exchange area (a), and it is proposed to grant a new licence to a local authority or to another company to provide public telephonic communication in the same exchange area, or any part thereof, then, if the existing company consent to it being made a condition of their licence—

(a) that they will not give favour or preference (b) to any person whomsoever within the area specified in the new licence, and will not, within that area, as a condition of giving a service, require from any person the grant of any facility except for the purpose of supplying telephonic communication to that person; and

(b) that their charges shall not, within the area specified in the new licence, exceed the maximum rates or fall below the minimum rates authorised in that behalf by the Postmaster-General within that area (c),

it shall be a condition of the grant of the new licence, that where it is proved to the satisfaction of the Postmaster-General that the existing company have incurred or contracted to incur, in the area specified in the new licence, material expenditure in laying down underground wires, and have by agreement with any local authority within that area acquired powers for that purpose, those powers shall continue for the period specified in the new licence for the duration thereof (d), but, subject as aforesaid, on the terms and conditions specified in the agreement (including any provisions thereof for determination on breach of covenant), except so far as they may be varied by any subsequent agreement with the local authority.

(2) Where an existing company is at the passing of this Act under a licence from the Postmaster-General supplying public telephonic communication in any exchange area, a licence to provide a system of public telephonic communication within the same area, or any part thereof, shall not be granted by the Postmaster-General to any person or body other than the council of a borough or urban district, unless it is shown to the satisfaction of the Postmaster-General that the application for the licence is approved by the council of each borough or urban district within which it is proposed by the application to establish a telephonic exchange.

(3) An existing company shall not, without the consent of the Postmaster-General given after the passing of this Act in each case, open an exchange in any exchange area in which they had not, before the passing of this Act, established an effective exchange.

(4) Where a local authority or a new company, under a licence from the Postmaster-General, provides a system of public telephonic communication in the whole or any part of an exchange area in competition with an existing company licensed by the Postmaster-General before the passing of this Act, then, if the existing company consent to it being made a condition of their licence—

(a) that they will not give favour or preference to any person whomsoever within the whole of the exchange area in question, and will not, within that exchange area as a condition of giving a service, require from any person the grant of any facility except for the purpose of supplying telephonic communication to that person; and

- (b) that their charges shall not within the whole of the exchange area in question exceed the maximum rates and (where the company are empowered by agreement with the local authority to lay underground wires) shall not fall below the minimum rates authorised in that behalf by the Postmaster-General within the area specified in the new licence, Section 3.

the licence of the existing company shall within the whole of the exchange area in question be extended and continue for the period specified in the new licence of the local authority or new company for the duration of such new licence, but, except as varied by this Act, the provisions of the licence of the existing company (including any provisions thereof for determination on breach of covenant) shall remain in force.

(5) If the licence of an existing company is, under the provisions of this section, extended in respect of any exchange area for a period of not less than eight years beyond the term existing at the passing of this Act, the company shall, at the request of any other licensee of the Postmaster-General providing public telephonic communication in the whole or any part of that exchange area, and under such circumstances and on such terms and conditions as may, within six months from the passing of this Act, be prescribed by an order of the Postmaster-General, made with the approval of the Treasury, afford all proper facilities for the transmission of telephonic messages between persons using the system of the company (either in the whole or in part of the exchange area, as the Postmaster-General may prescribe) and persons using the system of such other licensee, provided that the licensee so requiring inter-communication shall in any such case afford similar facilities.

(6) For the purposes of this section the expression "exchange area" means an exchange area as defined by an agreement made by an existing company with the Postmaster-General before the passing of this Act.

(a) Defined in sub-s. (6).

(b) The allowance of a commission for collecting messages is not a preference (*Reuter v. Electric Telegraph Co.* (1856), 6 E. & B. 341; 26 L. J. Q. B. 46).

In connection with the subject of charges the following cases should be noted.

A telephone company supplied the use of a telephone wire and apparatus under an agreement for three years at a rent payable quarterly. After the expiration of the three years the parties continued the agreement by mutual consent, but on the last day of a full quarter the company gave the customer notice determining the agreement forthwith and stating their intention to cut off the wire and remove the apparatus, at the same time demanding rent up to one day beyond the quarter. This rent was duly paid to and accepted by them, and the customer moved for an injunction to restrain the company from interfering with the wire and apparatus:—*Held*, that the agreement created the relation of landlord and tenant, and therefore the acceptance of the rent for the extra day was a waiver of the notice to determine the contract, and the injunction was granted (*Keith, Prowse & Co. v. National Telephone Co.*, [1894] 2 Ch. 147; 58 J. P. 573; 42 Digest 434, 64).

As to stamp duty on the ordinary form of agreement with a customer, see *National Telephone Co. v. Inland Revenue Commissioners*, [1900] A. C. 1; 64 J. P. 420; 17 Digest 240, 562.

(c) S. 2 of the Telegraph Act, 1885 (19 Halsbury's Statutes 279), gave the Postmaster-General general power for fixing the sums to be from time to time paid on account of the transmission of telegrams, which include telephonic communications.

(d) That is, of the powers, not of the licence (*National Telephone Co. v. Kingston-upon-Hull Corporation* (1903), 68 J. P. 62; 89 L. T. 291; 42 Digest 890, 30). An action by the telephone company against the local authority for the purpose of raising the question whether the duration of the powers conferred by the agreement was extended is not within the Public Authorities Protection Act, 1893, *ante*, p. 4875, and consequently the defendants succeeding were only entitled to party and party costs (*National Telephone Co., Ltd. v. Kingston-upon-Hull Corporation* (1903), 52 W. R. 26; 38 Digest 109, 782).

4. This Act may be cited as the Telegraph Act, 1899, and may be cited with short title the Telegraph Acts, 1863 to 1897.

Section 1

THE BURIAL ACT, 1900.

(63 & 64 VICT. c. 15) (a).

An Act to amend the Law relating to Burial Grounds. [10th July, 1900.]

Consecration. 1.—(1) The burial authority for any burial ground (b) may, if they think fit, apply to the bishop to consecrate any portion of the burial ground approved in that behalf by the Secretary of State.

(2) If the burial authority do not make the application within a reasonable time after a request in that behalf, and the Secretary of State is satisfied that a reasonable number of the persons for whom, or within the area for which, the burial ground is provided desire that a portion of it be consecrated, and that the consecration fees have been paid or reasonably secured, the Secretary of State may make the application in respect of an approved portion of the burial ground, and the bishop may consecrate accordingly, and it shall be the duty of the burial authority to make such arrangements as may be necessary for the consecration (c).

(a) This being one of the Burial Acts, it is strictly outside the scope of the present work, except so far as it affects the powers and duties of urban and rural councils who provide and maintain cemeteries under the powers of the Public Health (Interments) Act, 1879, *ante*, p. 4614.

• (b) The expression "burial authority" is defined by s. 11, *post*, p. 4994. It includes a local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, *ante*, p. 4614.

For a form of petition, see Enc. of Forms and Precedents, vol. II., p. 611, Form No. 22.

(c) The local authority had previously a discretion as to whether they should apply for consecration. See the Cemeteries Clauses Act, 1847, s. 23, *ante*, p. 4215. The text practically gives an appeal against the refusal of the local authority to make the application.

It seems that the persons who make the request of the Secretary of State under this section must themselves pay or secure the consecration fees. A table of those fees will be found in Mr. Brooke Little's work on the Burial Acts (3rd ed.), p. 739.

Chapels.

2.—(1) A burial authority may at their own cost erect on any part of their burial ground, which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for the exclusive use of any denomination.

(2) A burial authority may at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

(3) Where such a request is made and the estimated costs are tendered to the burial authority or reasonably secured, then, if the burial authority refuse to grant the request or fail to give effect to it within a reasonable time, a Secretary of State may, if he thinks fit, by order in writing, require the burial authority to erect, furnish, and maintain, or to give facilities for erecting, furnishing, and maintaining, such a chapel in accordance with directions given in the order, and the burial authority shall comply with the order.

(4) Subject to the provisions of this section the obligation of a burial authority to build a chapel within the consecrated part of a burial ground provided under the Public Health (Interments) Act, 1879, shall cease (a).

(a) This section had an important effect on the powers and duties of a local authority who provide a cemetery under the Act of 1879, *ante*, p. 4614. They are not bound to build a chapel on the consecrated portion of the cemetery as formerly under s. 25 of the Cemeteries Clauses Act, 1847, *ante*, p. 4216. And they cannot erect a chapel on the consecrated portion (see sub-s. (1) of this section) except at the cost of residents under sub-s. (2).

**Note to
Section 2.**

3.—(1) Every burial authority shall submit to the Secretary of State a Fees. table of fees to be received by them in respect of services rendered by any minister of religion or sexton, and the Secretary of State may approve the table with or without modifications. Provided that such fees shall be of the same amount in respect of burial service in the consecrated and the unconsecrated parts of a burial ground (a).

(2) If the burial authority fail to submit such a table on being requested to do so by the Secretary of State, he may make a table of fees.

(3) The fees fixed by the table shall be payable to and collected by the burial authority, together with the other fees payable to them, and shall be paid by the burial authority to the minister or sexton in such manner as may be agreed on, or as in default of agreement may be directed by the Secretary of State (b).

(4) Subject to the provisions of this section, no fee shall be payable to any incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument, or any other matter whatsoever, in any burial ground maintained by a burial authority, except for services rendered by him (c), and this enactment shall apply to any such fee which is by law or custom payable to the churchwardens of any parish or to trustees or other persons for any parochial purpose, or for the discharge of any debt or liability, in like manner as it applies to fees payable to an incumbent.

Provided as follows :

- (i) Where, at the passing of this Act, fees other than for services rendered are payable in respect of any matter arising in any burial ground attached to or used for the purposes of a parish, and laid out and used before the passing of this Act (d), the like fees shall continue to be paid during the incumbency of the person who, at the passing of this Act, is the incumbent of the parish, or during a period of fifteen years from the passing of this Act, whichever is longer, or if the fees are not paid to the incumbent, or to any person claiming through or under him, then during the said period of fifteen years, and shall be applicable to the like purposes as heretofore, and the burial authority shall collect and pay these fees in like manner as the fees to be paid for services rendered ;
- (ii) The Ecclesiastical Commissioners may at the request and subject to the approval of the incumbent, or other person interested, agree with any burial authority for such payment, periodical or otherwise, as may be thought equitable in commutation of the fees other than those claimed for services rendered, and an agreement so approved shall be binding on the persons for the time being interested, and the burial authority may make accordingly any payment so agreed upon. Where the fees are paid to an incumbent, or to any person claiming through or under him, the Ecclesiastical Commissioners shall apply the commutation money in the first instance to such compensation of the existing incumbent as they may deem equitable, regard being had to all the circumstances of the case ; and the residue, if any, for the augmentation of the benefice (e).

Section 3.

(5) No fee, other than fees payable to a sexton for services rendered by him, shall be paid to any clerk or other ecclesiastical officer in respect of interments in a burial ground maintained by a burial authority. Provided that any clerk or other ecclesiastical officer who at the passing of this Act is entitled to fees in respect of interments in any such burial ground may apply to the burial authority for compensation for the pecuniary loss caused to him by the foregoing enactment, and the burial authority shall receive and consider the application, and pay to him such sum of money as equitable compensation for his loss and in such manner as may be agreed on, or in default of agreement may be directed by the Secretary of State (*f*).

(6) For the purposes of this section, a burial authority may borrow in like manner and subject to the like conditions as they may borrow for the provision of a burial ground (*g*).

(7) The provisions of this section, except those as to collection, shall apply to any fixed annual sum substituted for fees in pursuance of section thirty-seven of the Burials Act, 1852 (*h*), in like manner as they apply to fees.

(a) As to fees in respect of a burial service before, at, or after cremation, see s. 12 of the Cremation Act, 1902, *post*, p. 5002. ★

(b) In a cemetery provided by a local authority under the Public Health (Interments) Act, 1879, *ante*, p. 4614, it appears that no fees were payable to an incumbent under the Cemeteries Clauses Act, 1847, s. 52 (2 Halsbury's Statutes 266). Such fees will now be payable under s. 7, *post*, p. 4993, according to the table fixed as stated in the text.

(c) Thus no fees can be due in respect of burials of non-conformists in consecrated ground conducted without any service in respect of burial being rendered by the incumbent (*Williams v. Briton Ferry Burial Board*, [1905] 2 K. B. 565; 69 J. P. 313; 7 Digest 546, 254).

(d) An addition to a burial ground purchased before the passing of this Act, although laid out and adapted for burial purposes, but not consecrated nor actually used until after the passing of the Act, was held not to come within this proviso (*Young v. Kingston-on-Thames, etc. Joint Burials Committee*, [1907] 1 K. B. 416; 71 J. P. 121; 7 Digest 546, 255). But where before the passing of the London Government Act, 1899 (11 Halsbury's Statutes 1225), separate burial grounds had been provided for parishes which after the passing of that Act were united by a scheme made in pursuance of that Act into one parish, it was held that the rector of one of these parishes was not entitled to fees other than the services actually rendered in respect of interments in these burial grounds, after the passing of the Burial Act, 1900, in respect of which he was not before the passing of this Act entitled (*Anderson v. Wandsworth Borough Council*, [1908] 2 Ch. 81; 72 J. P. 289; 7 Digest 546, 252).

(e) These provisions cannot apparently apply in the case of a cemetery provided by a local authority; for, as already stated, no fees were payable to incumbents under the Public Health (Interments) Act, 1879, *ante*, p. 4614, or, consequently, under s. 52 of the Cemeteries Clauses Act, 1847 (2 Halsbury's Statutes 266).

(f) A clerk might be appointed in a cemetery under the Cemeteries Clauses Act, 1847, s. 34, *ante*, p. 4217, but he was paid by stipend, not by fees, and the provision in the text does not appear to apply to such a clerk.

(g) In the case of a local authority the borrowing powers depend on Part IX. of the L. G. A., 1933, *ante*, pp. 1023, *et seq.*

(h) The section enables a vestry with the consent of the bishop to substitute a fixed payment for fees payable to the incumbent, clerk, and sexton and other persons and bodies under the Act of 1852 (2 Halsbury's Statutes 190).

Transfer of
powers to
[Minister of
Health].

4. The powers and duties of the Secretary of State under or referred to in the enactments in the First Schedule to this Act shall be transferred to the [Minister of Health] (*a*), and those enactments shall have effect as if any reference therein to a Secretary of State were a reference to the [Minister of Health] (*a*).

(a) The L. G. B. has now been superseded by the Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189). Speaking generally, all questions relating to sanitation, and to the constitution, powers, and finances of burial authorities, are now matters for the Minister of Health, whilst matters affecting the interests of the church and other religious denominations and their officers are referred to the Secretary of State, whether such matters arise in connection with burial grounds under the Burial Acts or with cemeteries under the Public Health (Interments) Act, 1879, *ante*, p. 4614.

Note to
Section 4.

The transfer hereby effected related principally to the following matters :—
The closing of burial grounds and the prohibition of the opening of new ones.
The approval of new burial grounds, and of additions to existing grounds.

The adoption of the Burial Acts and the constitution, powers, and areas of burial authorities.

The inspection and regulation of burial grounds.

Certain provisions as to the borrowing powers and expenses of burial authorities.

Fees other than Ecclesiastical Fees to be taken by burial authorities.

The purchase, sale, and letting of land.

The sanitary regulation of vaults and places of burial.

The grant of licences for interment in closed burial grounds.

The Secretary of State remains the central authority regarding the consecration of burial grounds, the allotment of parts thereof for the use of particular denominations, the building of chapels, and the removal of human remains; and new functions are entrusted to him by this Act, with respect to the fixing, varying, or commutation of, or compensation for, fees payable to ministers of religion, ecclesiastical officers, and sextons.

5.—(1) The Secretary of State may, if he thinks fit, appoint any person to inquire into any matter relating to the consecration of any part of a burial ground, or the building of any chapel therein, or the fixing, varying, or commutation of or compensation for any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith. Inquiries by Secretary of State.

(2) The Secretary of State may make such order as he thinks just as to the payment by the burial authority or other parties of the whole or any part of the costs of the inquiry, including the remuneration and expenses hereinafter mentioned. Any such order may direct payment to be made to the Exchequer or other parties, and may be enforced as if it were an order of the High Court.

(3) The Secretary of State may assign to any person appointed under this section such remuneration not exceeding five guineas a day as he may think fit, and a suitable allowance for expenses, and the remuneration and allowance so assigned shall, except so far as otherwise provided, be paid out of moneys provided by Parliament.

6. Unconsecrated ground which is maintained by a burial authority and set apart for the purposes of burial (a) shall not be applied to any other purpose except by leave of the [Minister of Health] (b). Protection of unconsecrated burial ground.

(a) As to what is meant by "set apart for the purposes of burial," see *Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454; 7 Digest 551, 291; *Nicholl v. Llanrwit Major Parish Council*, [1924] 2 Ch. 214; Digest Supp.; *London C. C. v. Greenwich Corporation*, [1929] 1 Ch. 305; 93 J. P. 123; Digest Supp. See also the Disused Burial Grounds Act, 1884, *ante*, p. 4694, as amended by the Open Spaces Act, 1887, s. 4, *ante*, p. 4699, s. 17 of the Burial Act, 1855 (2 Halsbury's Statutes 224), s. 177 of the P. H. A., 1875, and s. 95 of the P. H. A. A., 1907, *post*, p. 5065. Difficult questions arise from time to time as to whether pieces of unconsecrated land vesting in burial authorities which it is proposed to devote to other purposes are "set apart for the purposes of burial," and as to the precise statutory provisions governing the proposed appropriation. In such cases it is advisable to consult the Ministry of Health in the matter. And see *St. George's, Hanover Square (Rector and Churchwardens) v. Westminster Corporation*, [1910] A. C. 225; 74 J. P. 153; 7 Digest 551, 287.

(b) See note (a), to s. 4, *ante*, p. 4992.

7. The incumbent of any ecclesiastical parish situate wholly or partly within the area for which a burial ground is provided under the Public Health (Interments) Act, 1879, shall, with respect to his own parishioners, and persons dying in his parish, be under the same obligation to perform funeral services in that burial ground as he is to perform funeral services in a burial ground provided under the Burial Acts, and the power of the burial authority to appoint a chaplain for a burial ground provided under the Public Health (Interments) Act, 1879, shall cease, and where there is no chaplain for a burial ground so provided, burials in the consecrated part of the ground shall be Obligation of incumbent as to burial.
42 & 43 Vict. c. 31.

42 & 43 Vict.
c. 31.

Section 7. registered in like manner, and subject to the like provisions as burials in the unconsecrated part (a).

(a) The duty of appointing a chaplain was imposed by the Cemeteries Clauses Act, 1847, s. 27 (2 Halsbury's Statutes 261). The registration of burials in the consecrated portion of the cemetery is regulated by the Cemeteries Clauses Acts, 1847, s. 32, *ante*, p. 4217. When in future there is no chaplain the registration of all burials in the cemetery will be regulated by the Registration of Burials Act, 1864 (*op. cit.* 276). Under the Births and Deaths Registration Act, 1926, s. 1 (1) (15 Halsbury's Statutes 768), the body of a deceased person shall not be disposed of before a certificate of the registrar given in pursuance of that Act or an order of the coroner has been delivered to the person by whom or whose officer the register of burials in which the disposal is to be registered is kept, subject to a proviso that a written declaration that a certificate or order has been issued may be accepted in lieu of such certificate or order. See also s. 5 of the same Act (*op. cit.* 770) as to the burial of still-born children and the Cremation Regulations, 1930, made under s. 10 of the 1926 Act (*op. cit.* 772), and set out *ante*, p. 2461.

Generally as to the duty of an incumbent to perform funeral services, see note to s. 11 of the Cremation Act, 1902, *post*, p. 5001.

Notice of
intention to
bury.

43 & 44 Vict.
c. 41.

8. The notice to be given of intention to bury in a burial ground maintained by a burial authority shall be given at such time and to such person as the burial authority may direct, and so much of section one of the Burial Laws Amendment Act, 1880, as requires forty-eight hours' notice to be given in any such case shall be repealed (a).

(a) For a form of notice, see Enc. of Forms and Precedents, Vol. II., p. 617, Form No. 28.

Application of
certain pro-
visions of Burial
Acts to
cemeteries
under
42 & 43 Vict.
c. 31.

9. The provisions of section seven of the Burial Act, 1853, as to allotment of the unconsecrated part of a burial ground, and the Burial Laws Amendment Act, 1880, as amended by this Act, shall apply to burial grounds provided under the Public Health (Interments) Act, 1879, as if the burial authority were a burial board (a).

(a) The Burial Act, 1853, s. 7 (2 Halsbury's Statutes 213), provides that in all cases in which any burial board shall provide a new burial ground, that new burial ground shall be divided into consecrated and unconsecrated parts in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions as may be allowed by one of her Majesty's principal Secretaries of State. The application of this section to a cemetery provided by a local authority takes away from such authority the unfettered discretion which they formerly had under the Cemeteries Clauses Act, 1847, s. 35, *ante*, p. 4217. Where part of a burial ground has been allotted under s. 7 of the 1853 Act to a particular denomination, an injunction will be granted at the suit of the Att.-Gen. to restrain the burial of persons not of that denomination in the part so allotted (*Preston Corporation v. Pyke*, [1929] 2 Ch. 338; 93 J. P. 181; Digest Supp.).

Boundary
fences.

10 & 11 Vict.
c. 65.

10. Section fifteen of the Cemeteries Clauses Act, 1847 (relating to boundary fences), shall not apply to a burial ground provided under the Public Health (Interments) Act, 1879.

Meaning of
burial authority.
42 & 43 Vict.
c. 31.

11. In this Act the expression "burial authority" shall mean any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act.

Repeal.

12. [Repeal of Acts in Schedule II] (a).

(a) Sections 12, 13 (2) and Schedule II., repealed by S. L. R. A., 1908 (18 Halsbury's Statutes 1175).

Short title and
commencement.

13.—(1) This Act may be cited as "The Burial Act, 1900," and may be cited and shall be construed with the Burial Acts, 1852 to 1885.

(2) [Commencement of Act, January 1st, 1901] (a).

(a) Sections 12, 13 (2) and Schedule II., repealed by S. L. R. A., 1908 (*op. cit.*).

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS GIVING OR REFERRING TO POWERS WHICH ARE TO BE TRANSFERRED TO
THE LOCAL GOVERNMENT BOARD.

Session and Chapter.	Short Title.	Enactments.
15 & 16 Vict. c. 85 .	The Burial Act, 1852 .	Sections two, six, seven, nine, ten, and forty-four.
16 & 17 Vict. c. 134 .	The Burial Act, 1853 .	Sections one, four, five, and six.
18 & 19 Vict. c. 128 .	The Burial Act, 1855 .	Sections three, six, seven, eight, and seventeen.
20 & 21 Vict. c. 81 .	The Burial Act, 1857 .	Sections nine, ten, twenty-three, and twenty-four.
22 Vict. c. 1 .	The Burial Act, 1859 .	Section one.
23 & 24 Vict. c. 64 .	The Burial Act, 1860 .	Section four.
34 & 35 Vict. c. 33 .	The Burial Act, 1871 .	Section one.
*	*	*

THE PUBLIC LIBRARIES ACT, 1901.

(1 EDW. 7, c. 19) (a).

An Act to amend the Acts relating to Public Libraries, Museums, and Gymnasiums.
[17th August, 1901.]

AMENDMENT OF PUBLIC LIBRARIES ACTS, 1892 AND 1893.

1. This Act may be cited as "The Public Libraries Act, 1901," and shall be construed as one with the Public Libraries Act, 1892 (hereinafter referred to as the principal Act), and the Public Libraries (Amendment) Act, 1893, and those Acts and this Act may be together cited as the Public Libraries Acts, 1892 to 1901.

Short title and construction.
55 & 56 Vict. c. 53.
56 & 57 Vict. c. 11.

(a) See the Public Libraries Act, 1892, and the Public Libraries (Amendment) Act, 1893, *ante*, pp. 4840, 4871. As to the omission of the clause of enactment, see s. 4 of the S. L. R. A., 1894 (18 Halsbury's Statutes 1020). Part of the title of this Act as to the liability of managers of libraries to proceedings for libel was repealed by S. L. R. A., 1927 (*op. cit.* 1183). Reference should also be made to the Public Libraries Act, 1919, *post*, p. 5238. Under s. 1 of that Act, *post*, p. 5238, power is given to county councils to adopt the Public Libraries Acts, and where a county council become the library authority for any area the power of adoption of the council of a district comprised in that area is to cease. Section 2 of the same Act, *post*, p. 5239, enables a district council to relinquish to a county council its powers and duties under the Public Libraries Acts. Section 3 provides for the reference and delegation of library powers to education committees.

2.—(1) Any commissioners appointed for a library district under the principal Act (a) may be either voters in the district or persons who, though not voters, would, if the district were a rural parish having a parish council, be qualified for election as parish councillors.

Qualification of library commissioners.

(2) Section forty-six of the Local Government Act, 1894 (b), relating to disqualifications for election to, or membership of, certain authorities, shall

56 & 57 Vict. c. 73.

Section 2. have effect as if a library authority, being a body of commissioners appointed under the principal Act, were one of the authorities mentioned in that section

(a) See s. 5 (1) of that Act, *ante*, p. 4841.

(b) See now L. G. A., 1933, ss. 57, 59, *ante*, pp. 788, 796.

Power to library authority to make byelaws.

3.—(1) A library authority may make byelaws (a) for all or any of the following purposes relating to any library, museum, art gallery, or school, which by virtue of the principal Act or this Act is under their control, that is to say :

- (a) for regulating the use of the same and of the contents thereof, and for protecting the same and the fittings, furniture, and contents thereof from injury, destruction or misuse ;
- (b) for requiring from any person using the same any guarantee or security against the loss of, or injury to, any book or other article ;
- (c) for enabling the officers and servants of the library authority to exclude or remove therefrom persons committing any offence against the Libraries Offences Act, 1898 (b), or against byelaws.

61 & 62 Vict.
c. 53.

(2) All byelaws under this section shall be made subject and according to the provisions respecting byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (c), and those sections shall apply as if the expression " local authority " therein included in every case a library authority.

38 & 39 Vict.
c. 55.

(3) All offences and penalties under any such byelaw may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts (d).

(a) The power of making byelaws conferred by this section is not in substitution for the power of making regulations conferred by s. 15 of the Public Libraries Act, 1892, *ante*, p. 4844, which is still retained. Such regulations do not require confirmation by the Minister of Health, but are not enforceable by penalties. In ordinary cases, however, regulations are sufficient for the attainment of the objects for which they are made ; and it is not anticipated that library authorities will be desirous of making byelaws except where experience has shown them to be required.

(b) *Ante*, p. 4948.

(c) See now L. G. A., 1933, s. 250, *ante*, p. 1104. The power to confirm, allow or disallow byelaws hereunder is now transferred to the Board of Education, see Order in Council, 17th May, 1920, *ante*, p. 3186.

(d) Defined by the Interpretation Act, 1889, s. 13 (10) (18 Halsbury's Statutes 997).

Extension of
61 & 62 Vict.
c. 53.

4. The Libraries Offences Act, 1898 (a), shall apply to any museum, art gallery or school provided under the Public Libraries Act, 1892.

(a) This Act originally extended only to libraries and reading rooms. See s. 2, *ante*, p. 4948.

Power to library authorities to make agreements for use of library.

5.—(1) The library authorities of two or more library districts may agree to share, in such proportions and for such period as may be determined by the agreement, the cost of the purchase, erection, repair and maintenance of any library building in one of those districts, and also the cost of the purchase of books and newspapers for such library, and all other expenses connected with the same, and may also agree as to the management and use of the library, and as to the interchange, hire and use of books and newspapers belonging to such authorities respectively (a).

(2) This section shall apply, with the necessary modifications, to a museum, school for science, art gallery or school for art in like manner as to a library.

(a) This provision is in substitution for s. 16 (1) of the Public Libraries Act, 1892, which is repealed by s. 14, and Sched., *post*, p. 4998, and any library authority, including an urban authority or a parish council, may enter into an agreement as contemplated by the section with any other library authority whether commissioners or other. Moreover, the agreement may relate to a museum, school for science or art, or art gallery as well as to a library.

6. In a library district, being a parish, the sanction of the parish meeting or vestry shall not be required annually (a) for raising the sums from time to time due from the parish for defraying the expenses incurred by the library authority, and those sums shall be paid by the overseers (b) on the order of the library authority. But in any parish in a rural district the sanction of the parish meeting shall be required in the year one thousand nine hundred and eleven, and in every tenth year thereafter: Provided that nothing in this section shall affect the operation of section eleven of the Local Government Act, 1894 (c).

Section 6.

Amendment of 55 & 56 Vict. c. 53, s. 18, as to expenses in parishes.

56 & 57 Vict. c. 73.

(a) This was formerly necessary under the Public Libraries Act, 1892, s. 18 (2), as affected by s. 7 (3) of the L. G. A., 1894.

(b) Overseers were abolished by the R. and V. Act, 1925, s. 62, *ante*, p. 2222, and their duties in respect to rates are now exercised by the rating authorities.

(c) The adoptive Acts in the above section include the Public Libraries Acts. The limitation on the amount of the rate imposed by s. 2 of the 1892 Act, *ante*, p. 4840, was repealed by s. 11 and Sched. of the 1919 Act, *post*, p. 5242.

7. An urban authority for whose district the Museums and Gymnasiums Act, 1891 (a), has been adopted, either wholly or so far as it relates to museums only, may appropriate for the purposes of that Act a museum provided for the district under the principal Act, and thereupon the Museums and Gymnasiums Act, 1891, shall apply to the museum, as if it were provided under that Act (b).

Application of 54 & 55 Vict. c. 22, to museum provided under principal Act.

(a) See that Act, *ante*, p. 4827.

(b) See, however, s. 9 of the 1919 Act, *post*, p. 5241.

8. On the adoption of the principal Act for any library district, the library authority shall forthwith give notice in writing of such adoption to the Local Government Board (a). The library authority of every district in which the Act has already been adopted shall give the like notice within three months after the passing of this Act.

Notice to Local Government Board (a).

(a) Now the M. of H. Notice must also be given to the Board of Education, see Order in Council, 17th May, 1920, *ante*, p. 3186.

9. In any library district every person who is a parochial elector within the meaning of the Local Government Act, 1894 (a), shall be a voter for the purposes of the principal Act and this Act; and parochial electors shall for all the purposes of the principal Act, be substituted for county electors (b).

Definition of "voter." 56 & 57 Vict. c. 73.

(a) For "parochial electors" now read "local government electors." See Representation of the People Act, 1918, Sched. VI., 2, and s. 3, *post*, p. 5185. The expression "local government elector" when used with reference to a parish in an urban district, or in the county of London or any county borough, means any person who would be a local government elector of the parish if it were a rural parish (L. G. A., 1894, s. 75 (2), *ante*, p. 4920).

(b) The definition of the expression "voter" in s. 27 of the principal Act, *ante*, p. 4847, is consequently repealed.

10. . . . (a).

(a) This section was repealed by s. 11 and the Schedule to the Public Libraries Act, 1919, *post*, p. 5242. That Act repealed s. 2 of the Public Libraries Act, 1892, and other enactments relating to the limitations on the rate.

EXTENT OF ACT.

11. This Act shall not apply to Scotland.

Act not to apply to Scotland.

Section 12.

APPLICATION OF ACT TO IRELAND.

12. [*Application of certain provisions to Ireland. Repealed and replaced by the Public Libraries (Ireland) Act, 1902.*]

APPLICATION OF THE MUSEUMS AND GYMNASIUMS ACT, 1891, AND PUBLIC LIBRARIES (AMENDMENT) ACT, 1893, TO LONDON.

Application to
London of
54 & 57 Vict.
c. 22 and
56 & 57 Vict.
c. 11.

13. The Museums and Gymnasiums Act, 1891 (*a*), and the Public Libraries (Amendment) Act, 1893 (*b*), shall extend to the administrative county of London, and for the purpose of such extension shall be modified as follows :

The expression "urban authority" shall include the common council of the city of London (*c*) and a metropolitan borough council, and the expression "district" or "urban district" shall include the city of London and a metropolitan borough ;

Any expenses incurred by the common council of the city of London or by a metropolitan borough council under the Museums and Gymnasiums Act, 1891, so far as they are not defrayed by fees and other money received under the said Act, shall be defrayed in the manner in which expenses incurred by that council under the principal Act are payable (*d*).

(*a*) *Ante*, p. 4827.

(*b*) *Ante*, p. 4871.

(*c*) As to the city of London, see s. 21 of the principal Act, *ante*, p. 4846.

(*d*) See s. 10 of the Museums and Gymnasiums Act, 1891, *ante*, p. 4830.

REPEAL.

Repeal.

14. *The Acts mentioned in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule (a).*

(*a*) This section and the Schedule were repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Section 14.

SCHEDULE.

Session.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 22 .	<i>The Museums and Gymnasiums Act, 1891.</i>	<i>In section two, the words "or the administrative county of London."</i>
55 & 56 Vict. c. 53 .	<i>The Public Libraries Act, 1892.</i>	<i>Section three, in so far as it is inconsistent with this Act. Sub-section one of section sixteen. Sub-section two of section eighteen, and in sub-section three of the same section the words "but the sanction of the vestry shall not be required for raising the sums from time to time due from the parish for meeting those expenses." So much of section twenty-seven as relates to the definition of a "voter." The First Schedule.</i>

Section 1.

CREMATION ACT, 1902 (a).

(2 EDW. 7, c. 8.)

An Act for the regulation of the burning of Human Remains, and to enable Burial Authorities to establish Crematoria. [22nd July, 1902.]

1. This Act may be cited as the Cremation Act, 1902.

Short title.

(a) This Act is inserted as applicable under the P. H. (Interments) A., 1879, *ante*, p. 4614. As to the omission of the clause of enactment, see S. L. R. A., 1894, s. 4 (18 Halsbury's Statutes 1020).

2. In this Act—

Definitions

The expression "burial authority" (a) shall mean any burial board, any council, committee, or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the Public Health (Interments) Act, 1879, or under any local Act;

The expression "crematorium" shall mean any building fitted with appliances for the purposes of burning human remains, and shall include everything incidental or ancillary thereto.

(a) This definition is taken from s. 11 of the Burial Act, 1900, *ante*, p. 4994.

3. [Application to Scotland.]

4. The powers of a burial authority to provide (a) and maintain burial grounds or cemeteries, or anything essential, ancillary, or incidental thereto, shall be deemed to extend to and include the provision and maintenance of crematoria (b):

Burial authority may provide for cremation.

Provided that no human remains shall be burned in any such crematorium until the plans and site thereof have been approved by the Local Government Board (c) and until the crematorium has been certified by the burial authority to the Secretary of State to be complete, built in accordance with such plans, and properly equipped for the purpose of the disposal of human remains by burning (d).

(a) This will include power to borrow for the purpose of providing a crematorium.

(b) The effect is to make it necessary to obtain for the provision of a crematorium, or for any expenditure for that purpose, or for the acquisition or appropriation of any land for that purpose, the same sanction that would be required by the local authority in the case of the provision of a burial ground or cemetery.

(c) The L. G. B. has now been superseded by the Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189).

(d) Apart from this provision the burning of human remains may under certain circumstances amount to a public nuisance. See *R. v. Price* (1884), 12 Q. B. D. 247; 7 Digest 563, 380. See also *Williams v. Williams* (1882), 20 Ch. D. 659; 46 J. P. 726; 7 Digest 563, 379. And it is a misdemeanour to burn a dead body with intent to prevent an inquest (*R. v. Stephenson* (1884), 13 Q. B. D. 331; 49 J. P. 486; 7 Digest 563, 381).

5. No crematorium shall be constructed nearer to any dwelling house than two hundred yards, except with the consent, in writing of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in the consecrated part of the burial ground of any burial authority (a).

Site of crematorium.

(a) See s. 10 of the Cemeteries Clauses Act, 1847, *ante*, p. 4213, and notes thereto.

6. A burial authority may accept a donation of land for the purposes of a crematorium, and a donation of money or other property for enabling them to acquire, construct, or maintain a crematorium.

Donations of land.

Section 7.

Regulations as to burning.

5 & 6 Will. 4,
c. 62.54 & 55 Vict.
c. 39.

7. The Secretary of State shall make regulations (a) as to the maintenance and inspection of crematoria and prescribing in what cases and under what conditions the burning of any human remains may take place, and directing the disposition or interment of the ashes (b), and prescribing the forms of the notices, certificates, and declarations to be given or made before any such burning is permitted to take place, such declarations to be made under and by virtue of the Statutory Declarations Act, 1835, and also regulations as to the registration of such burnings as have taken place. A copy of such regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, or, if not, then within three weeks after the beginning of the next ensuing Session of Parliament; and, after such regulations have lain for forty days before Parliament, then, unless within such forty days an address has been presented by one or other of the Houses praying His Majesty to withhold his assent from such regulations or any part thereof, such regulations shall have the same effect as if they were enacted in this Act (c). All statutory provisions (d) relating to the destruction and falsification of registers of burials, and the admissibility of extracts therefrom as evidence in courts and otherwise, shall apply to the register of burnings directed by such regulations to be kept, and the Stamp Act, 1891 (e), shall apply to a register under this Act as if it were a register of burials.

(a) Regulations were made on 31st March, 1903, but they were revoked by later regulations dated 26th April, 1920, which were amended by regulations of 23rd June, 1925, and 6th May, 1927. See now regulations of 28th October, 1930, *ante*, pp. 2461 *et seq.* Breach of these regulations is punishable under s. 8, *infra*. The power to make regulations under this section was extended by s. 10 of the Births and Deaths Registration Act, 1926 (15 Halsbury's Statutes 772), to include a power to make regulations for the purpose of applying that Act to cases where human remains are disposed of by cremation. The latest regulations were accordingly made under the combined Acts.

(b) Such interment of ashes is not a burial within the prohibitions against burial in a church under the Church Building Act, 1818 (6 Halsbury's Statutes 698), the P. H. Acts, or the Burial Act, 1853, s. 3 (2 Halsbury's Statutes 212), and therefore a faculty may issue for allowing such interment in a church (*Re Kerr*, [1894] P. 284; 7 Digest 528, 87). There is nothing in the current regulations to prevent such interment.

(c) Consequently no question can arise as to whether any such regulations are *ultra vires*. See *Institute of Patent Agents v. Lockwood*, [1894] A. C. 347; 42 Digest 613, 139. See, however, the comments on this case in *R. v. Pharmaceutical Society*, [1899] 2 I. R. 132, and *Waterford Corporation v. Murphy*, [1920] 2 I. R. 165. Reference may also be made to *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K. B. 171, *per* YOUNGER, L.J., at p. 212; 88 J. P. 13; Digest Supp.; *R. v. Minister of Health, Ex parte Yaffe*, [1930] 2 K. B. 98; 94 J. P. 98; reversed, [1931] A. C. 494; 95 J. P. 125; and cf. the Small Holdings and Allotments Act, 1908, s. 39 (3), and notes thereto at *post*, p. 5076.

(d) See s. 15 of the Burial Act, 1857, ss. 36 and 37 of the Forgery Act, 1861 (2, 4 Halsbury's Statutes 233, 585), as amended by the Forgery Act, 1913 (4 Halsbury's Statutes 787).

(e) See ss. 1, 64, and Schedule I. of that Act (16 Halsbury's Statutes 618, 637, 656), which impose a stamp duty of one penny on every certified copy from any register of burials subject to certain exemptions.

Penalties for
breach of
regulations,
&c.

8.—(1) Every person who shall contravene any such regulation as aforesaid or shall knowingly carry out or procure or take part in the burning of any human remains except in accordance with such regulations and the provisions of this Act, shall (in addition to any liability or penalty which he may otherwise incur) (a) be liable on summary conviction to a penalty not exceeding fifty pounds. Provided that any person aggrieved by any conviction may appeal therefrom to quarter sessions (b).

(2) Every person who shall wilfully make any false declaration or (c) representation, or sign, or utter any false certificate, with a view to procuring the burning of any human remains, shall (in addition to any penalty or liability which he may otherwise incur) (d) be liable to imprisonment with or without hard labour not exceeding two years.

(3) Every person who with intent to conceal the commission or impede the prosecution of any offence (e), procures or attempts to procure the cremation of any body, or with such intent makes any declaration or gives any certificate under this Act, shall be liable to (f) conviction on indictment to penal servitude for a term not exceeding five years. Section 8.

(a) This refers to the liability to conviction on indictment for a misdemeanour. See *R. v. Price* and *R. v. Stephenson* cited in the note to s. 4, *ante*, p. 4999.

(b) In accordance with the provisions of s. 31 of the S. J. A., 1879 (11 Halsbury's Statutes 338), set out in the notes to s. 301 of the P. H. A., 1936, *ante*, p. 627.

(c) Repealed by Perjury Act, 1911 (4 Halsbury's Statutes 772).

(d) See note (d) to s. 7, *supra*, as to falsification of registers.

(e) How does such a person where the "offence" is a felony differ from an accessory after the fact? In such a case is he punishable still as an accessory after the fact or only under this statute? Is a wife punishable under this statute where she would not be punishable as an accessory after the fact? Compare the history of the law with regard to the punishment of the receiver of stolen goods.

(f) *Sic*. According to the common form "to" should be "on."

9. The burial authority may demand payment of any such charges or fees. fees.
fees for the burning of human remains in any crematorium provided by them as may be authorised by any table approved by the Local Government Board (a), and such charges or fees, and any other expenses properly incurred in or in connection with the cremation of a deceased person, shall be deemed to be part of the funeral expenses of the deceased (b).

(a) Now the Minister of Health (see note (c) on p. 4999, *ante*).

(b) This section appears to be of general application and to enable the burial authority to enforce payment against any person against whom they might enforce payment of charges or fees under s. 34 of the Burial Act, 1852 (2 Halsbury's Statutes 202).

As to the liability of executors for funeral expenses, see *Ambrose v. Kerrison* (1851), 10 C. B. 776; 20 L. J. C. P. 135; 7 Digest 524, 38; *Brice v. Wilson* (1834), 3 Nev. & M. K. B. 512; 3 L. J. K. B. 93; 7 Digest 524, 32; *Rogers v. Price* (1829), 3 Y. & J. 28; 7 Digest 522, 15; *Tugwell v. Heyman* (1812), 3 Camp. 298; 7 Digest 523, 28. As to the liability of the deceased's estate, see *Green v. Salmon* (1838), 8 Ad. & El. 348; 7 L. J. Q. B. 236; 7 Digest 523, 21; *Newcombe v. Beloe* (1867), L. R. 1 P. & D. 314; 7 Digest 523 26. As to the liability of a husband for his wife's funeral expenses, see *Bertie v. Chesterfield (Lord)* (1723), 9 Mod. Rep. 31; 27 Digest 83, 650; *Jenkins v. Tucker* (1788), 1 Hy. Bl. 90; 7 Digest 524, 39; *Ambrose v. Kerrison*, *supra*; *Bradshaw v. Beard* (1862), 12 C. B. (N. S.) 344; 26 J. P. 630; 7 Digest 524, 41; *Re M'Myn, Lightbown v. M'Myn* (1886), 33 Ch. D. 575; 7 Digest 523, 24. As to the liability of a wife for her husband's funeral expenses, see *Chapple v. Cooper* (1844), 13 M. & W. 252; 13 L. J. Ex. 286; 7 Digest 524, 42; *Gregory v. Lockyer* (1821), 6 Madd. 90; 22 R. R. 246; *Williter v. Dobie* (1855), 2 Kay & J. 647; 4 W. R. 669. As to the liability of a parent for the funeral expenses of his child, see *R. v. Vann* (1851), 2 Den. 325; 15 J. P. 802; 7 Digest 522, 14; and the non-liability of a child for a parent, *Chapple v. Cooper*, *supra*. As to the liability of a householder for an inmate, *R. v. Stewart* (1840), 12 Ad. & El. 773; 10 L. J. M. C. 40; 7 Digest 522, 10. See also s. 75 of the Poor Law Act, 1930; 12 Halsbury's Statutes 1005, as to burial of poor persons as defined in that Act (*ibid.* 1048); as to persons who have died of infectious disease, s. 162 of the P. H. A., 1936, *ante*, p. 429, and in London, s. 235 of the P. H. (London) Act, 1936 (30 Halsbury's Statutes 572). As to dead bodies cast up by the sea or in tidal or navigable waters, Burial of Drowned Persons Act, 1808 (2 Halsbury's Statutes 273), and Burial of Drowned Persons Act, 1886 (*op. cit.* 279); and as to seamen, s. 34 of the Merchant Shipping Act, 1906 (18 Halsbury's Statutes 459), and *Anderson v. Rayner*, [1903] 1 K. B. 589; 41 Digest 224, 619, decided under the now repealed s. 207 of the Merchant Shipping Act, 1894.

10. Nothing in this Act shall interfere with the jurisdiction of any coroner Saving for coroners.
under the Coroners Act, 1887, or any Act amending the same, and nothing in this Act shall authorise the burial authority or any person to create or permit a nuisance (a). 50 & 51 Vict.
c. 71.

(a) See *R. v. Price* and *R. v. Stephenson*, cited in the note to s. 4, *ante*, p. 4999.

11. The incumbent of any ecclesiastical parish shall not, with respect to Incumbent not
his parishioners or persons dying in his parish, be under any obligation to to be obliged
perform a funeral service before, at, or after the cremation of their remains to perform
burial service.

Section 11. within the ground of a burial authority, but, upon his refusal so to do, any clerk in Holy Orders of the Established Church not being prohibited under ecclesiastical censure, may, with the permission of the bishop and at the request of the executor of the deceased person, or of the burial authority, or other person having charge of the cremation or interment of the cremated remains, perform such service within such ground (a).

(a) Apart from this enactment and from s. 6 of the Burial Laws Amendment Act, 1880, (2 Halsbury's Statutes 244), a clergyman of the Church of England is bound to read the burial service in the manner and form prescribed by the Book of Common Prayer over the corpse of any person who has been baptised with water in the name of the Holy Trinity if required so to do, though the deceased was never baptised otherwise than by a layman, unless the special ecclesiastical prohibitions with regard to persons excommunicated and that have laid violent hands on themselves apply (*Escott v. Mastin* (1842), 4 Moo. P. C. C. 104; 7 Digest 531, 114). But the ordinary cannot compel an incumbent by ecclesiastical censure to perform the burial service on unconsecrated ground (*Rugg v. Kingsmill* (1868), L. R. 2 P. C. 59; 32 J. P. 356). Moreover, it is illegal for any one, unless he is lawfully authorised, to read or assist in reading the burial service in consecrated ground over a dead body (*Johnson v. Friend* (1860), 6 Jur. (N. S.) 280; 7 Digest 530, 105). And it is a breach of ecclesiastical law on the part of a burial board to permit any person to perform the burial service in the consecrated portion of their burial ground unless such person be authorised by the incumbent to do so, and *a fortiori*, unless he be a person duly qualified (*Wood v. Headingley-cum-Burley Burial Board*, [1892] 1 Q. B. 713; 56 J. P. 326; 7 Digest 546, 253).

See also s. 7 of the Burial Act, 1900, *ante*, p. 4993.

Fees may be fixed.

12. In any table of fees respecting burials to be made or approved by the Secretary of State (a), a fee may be fixed in respect of a burial service before, at, or after cremation, and if no fee is fixed, the fee, if any, fixed in respect of a burial service shall apply.

(a) As to fees in respect of services rendered by a minister of religion or sexton, see s. 3 of the Burial Act, 1900, *ante*, p. 4991.

Application of 10 & 11 Vict. c. 65, ss. 52 and 57.

13. Sections fifty-two and fifty-seven of the Cemeteries Clauses Act, 1847 (a), and any similar provisions in any local and personal Act authorising the making of a cemetery, shall apply to the disposition or interment of the ashes of a cremated body as if it were the burial of a body.

(a) These sections have no application to a cemetery provided by a local authority under the P. H. (Interments) A., 1879. See note (a), *ante*, p. 4220.

Repeal of local Acts.

14. As from the date at which regulations under this Act come into force any provisions of any local and personal Act for the like purpose as this Act, and any byelaws or regulations made thereunder, shall, so far as they relate to that purpose, cease to be in operation.

15. [*Commencement of Act, April 1st, 1903.*]

Extent of Act.

16. This Act shall not apply to Ireland.

ALKALI, ETC., WORKS REGULATION ACT, 1906.

Section 1.

(6 EDW. 7, c. 14) (a).

An Act to consolidate and amend the Alkali, etc., Works Regulation Acts, 1881 and 1892. [4th August, 1906.]

PART I.

ALKALI WORKS AND ALKALI WASTE.

1.—(1) Every alkali work (b) shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector (c), of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid (d). Condensation of muriatic acid gas in alkali works.

(2) The owner (b) of any alkali work (b) which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence fifty pounds, and in the case of every subsequent offence one hundred pounds (e).

(a) This Act repeals and re-enacts with amendments the Alkali, etc., Works Regulation Act, 1881, the L. G. B.'s Provisional Order Confirmation (Salt Works) Act, 1884, passed under s. 10 of the Act of 1881, and the Alkali, &c., Works Regulation Acts, 1892. The Act was amended by the Public Health (Smoke Abatement) Act, 1926, s. 4, Vol. V. and 13 Halsbury's Statutes 1159.

(b) Defined by s. 27, *post*, p. 5013.

(c) See ss. 10—14, *post*, pp. 5008—10, as to inspection, and s. 25, *post*, p. 5013, as to determination of questions by chief inspector.

(d) As to calculation of acid, see s. 16, *post*, p. 5010.

(e) As to recovery of fines, see ss. 17, 18, *post*, pp. 5010, 5011. The owner may be discharged on proof against the actual offender, s. 20, *post*, p. 5012.

2.—(1) In addition to the condensation of muriatic acid gas as aforesaid the owner (a) of every alkali work (a) shall use the best practicable means (a) for preventing the escape of noxious or offensive gases (a) by the exit flue of any apparatus used in any process carried on in the work, and for preventing the discharge, whether directly or indirectly, of such gases into the atmosphere, and for rendering such gases where discharged harmless and inoffensive, subject to the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector to any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section (b). Prevention of discharge of noxious and offensive gas in alkali works.

(2) If the owner of any alkali work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding in the case of the first offence twenty pounds, and in the case of every subsequent offence fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued (c).

(a) Defined by s. 27, *post*, p. 5013.

(b) This clause introduces considerable amendments of s. 4 of the repealed Act of 1881. It is extended to all escapes from the exit flue of any apparatus used in any process carried on in the works, and to every discharge of noxious or offensive gases, whether directly or indirectly, into the atmosphere, subject to the qualification mentioned.

(c) See note (e) to s. 1, *supra*.

3.—(1) Every work of whatever description in which any liquid containing either acid or any other substance capable of liberating sulphuretted hydrogen (a) from alkali waste or drainage therefrom is produced or used shall Separation of acids and other substances from alkali waste

Section 3.and drainage
therefrom.

be carried on in such manner that the liquid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

(2) The owner of any work which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence fifty pounds, and in the case of every subsequent offence one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued (b).

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c. 75.

(3) On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off such liquid as aforesaid produced in such work into the sea or into any river or watercourse into which the liquid can be carried without contravention of the Rivers Pollution Prevention Act, 1876, as amended by any subsequent enactment (c); and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act (d).

(4) Compensation (e) shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

(a) The inclusion of works in which any liquid containing any substance other than acid capable of liberating sulphuretted hydrogen from alkali waste is produced or used is a new feature. Section 5 of the repealed Act of 1881 was limited to works in which acid was produced or used.

(b) See note (e) to s. 1, *ante*, p. 5003.

(c) See the Acts here referred to, *ante*, p. 4581. As to the discharge of solid matter in suspension into any navigable water, see *United Alkali Co. v. Simpson*, *ante*, p. 4588.

(d) See ss. 15 and 16 of the P. H. A., 1936, *ante*, pp. 26—36.

Reference may also be made to *St. Helens Chemical Co. v. St. Helens Corporation* (1876), 1 Ex. D. 196; 40 J. P. 471; 36 Digest 230, 710, where the owners were held liable for a nuisance caused by the evolution of noxious gases in a sewer consequent upon the discharge into the sewer of muriatic acid and sulphur.

(e) The amount will be ascertainable under the P. H. A., 1936, s. 278, *ante*, p. 556.

Deposit or
discharge of
alkali waste.

4.—(1) Alkali waste shall not be deposited or discharged without the best practicable means (a) being used for effectually preventing any nuisance arising therefrom (b).

(2) Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding in the case of the first offence twenty pounds, and in the case of every subsequent offence fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued (c).

(a) Defined by s. 27, *post*, p. 5013.

(b) As to the discharge of solid matter in suspension into any navigable water, see *United Alkali Co. v. Simpson*, *ante*, p. 4588.

(c) As to recovery of fines, see ss. 17, 18, *post*, pp. 5010—11.

Prevention of
nuisance from
alkali waste
already de-
posited or dis-
charged.

5. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector (a), if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and, if such owner or occupier fails to use the best practicable and reasonably available means (b) for the abatement thereof, he shall be liable to a fine not exceeding twenty

pounds, and, if he does not proceed to use such means within such time as may be limited by the court inflicting such fine, he shall be liable to a further penalty not exceeding five pounds for every day after the expiration of the time so limited during which such failure continues.

Section 5.

(a) See s. 10, *post*, p. 5008.

(b) "The best practicable means" are defined by s. 27, *post*, p. 5013. The addition of the words "and reasonably available" introduces an element of uncertainty as to whether that definition is to be adhered to. But probably the intention of the Act is that it shall, subject to the court's deciding also the question of reasonable availability for itself.

PART II.

SULPHURIC ACID, MURIATIC ACID, AND OTHER SPECIFIED WORKS.

6.—(1) Every sulphuric acid work as defined in paragraph (1) of the First Schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector (a), of the acid gases of sulphur or of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in that work, to such an extent that the total acidity of those gases in each cubic foot of residual gases after completion of the process, and before admixture with air, smoke, or other gases, does not exceed what is equivalent to four grains of sulphuric anhydride.

Condensation of acid gases in sulphuric acid and muriatic acid works.

(2) Every muriatic acid work as defined in paragraph (8) of the First Schedule to this Act shall be carried on in such manner as to secure the condensation to the satisfaction of the chief inspector (a) of the muriatic acid gas evolved in such work, to such extent that in each cubic foot of air, smoke, or chimney gases escaping from the work into the atmosphere there is not contained more than one-fifth part of a grain of muriatic acid (b).

(3) The owner of any sulphuric acid work or of any muriatic acid work which is carried on in contravention of this section shall be liable to a fine not exceeding in the case of the first offence fifty pounds, and in the case of every subsequent offence one hundred pounds.

(a) See s. 10, *post*, p. 5008.

(b) As to calculation of acid, see s. 16, *post*, p. 5010.

7.—(1) The owner of any work specified in the First Schedule (a) to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the escape of noxious or offensive gases (b) by the exit flue of any apparatus used in the process carried on in the work, and for preventing the discharge, whether directly or indirectly, of such gases into the atmosphere (c), and for rendering such gases where discharged harmless and inoffensive, subject to the qualification that, on the basis of the amount of acid gas per cubic foot, no objection shall be taken under this section by an inspector—

Prevention of discharge of noxious or offensive gas in scheduled works.

(a) To any muriatic acid gas in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet, where the amount of such acid gas in each cubic foot of air, smoke, or gases so discharged does not exceed the amount limited by the last preceding section :

(b) To any acid gases in the air, smoke, or gases discharged into the atmosphere by a chimney or other final outlet receiving the residual gases from any process for the concentration or distillation of sulphuric acid, where the total acidity of such acid gases (including those from the combustion of coal) in each cubic foot of air, smoke, or gases so discharged does not exceed what is equivalent to one grain and a half of sulphuric anhydride.

Section 7.

(2) If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding in the case of the first offence twenty pounds, and in the case of every subsequent offence fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

(a) See this Schedule at *post*, p. 5015. The Minister of Health has by an order of 1928 added to the list of works contained in that Schedule under the P. H. (Smoke Abatement) Act, 1926, s. 4 (1), Vol. V. and 13 Halsbury's Statutes 1159.

(b) Defined by s. 27, *post*, p. 5013.

(c) This clause introduces amendments of s. 9 of the repealed Act of 1881 similar to those introduced by s. 2, *ante*, p. 5003, as regards s. 4 of the same Act, and it also amends the qualification so as to effect a very considerable alteration of the standard of pollution.

Provisional
Order to
prevent dis-
charge of
noxious or
offensive gas in
cement and
smelting works.

8.—(1) An inspector may inquire whether, in any works in which aluminous deposits are treated for the purpose of making cement (hereinafter called cement works) or in any works in which sulphide ores, including regulus, are calcined or smelted (hereinafter called smelting works) (a), means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of any noxious or offensive gas (b) evolved in such works, or for rendering such gas where discharged harmless or inoffensive.

(2) Where it appears to the Local Government Board (c) that such means can be adopted at a reasonable expense, the Board (c) may by Order require the owners of such works to adopt the best practicable means for the purpose, and may by the Order limit the amount or proportion, in the case of cement works or smelting works, of any noxious or offensive gas which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the Order extend to such works such provisions of this Act relating to scheduled works as they think fit.

(3) An Order made under this section shall be provisional only, and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act" when used in this Act shall be deemed to include an Order so confirmed, so far as is consistent with the tenor of that Order.

(4) The Board (c) shall take such steps as they may think fit for giving notice to persons interested of the provisions of any Order made by them under this section before any Bill for confirming the same is introduced into Parliament.

(5) An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.

(6) An Order made under this section may be repealed, altered, or amended by any subsequent Order made under this section, and confirmed by Parliament (d).

(a) These works were for the first time brought within the scope of this legislation. Smelting works were to a certain extent exempted from the provisions of the P. H. A., 1875. See s. 334 of that Act (13 Halsbury's Statutes 762) and s. 109 of the P. H. A., 1936, *ante*, p. 346.

Salt works, on the other hand, which were partially exempted from the provisions of the repealed Act of 1881 by the Act of 1892, are not mentioned at all in this Act.

(b) Defined by s. 27, *post*, p. 5013.

(c) Now the Minister of Health (Ministry of Health Act, 1919), *post*, p. 5189.

(d) No power of repeal, etc., was included in the corresponding s. 10 of the repealed Act of 1881.

Section 9.

PART III.

(i) REGISTRATION OF WORKS.

9.—(1) An alkali work, a scheduled work, a cement work, or a smelting work (a) shall not be carried on unless it is certified to be registered. Registration of works and stamp duty.

(2) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner (b).

(3) A certificate of registration, if issued at a time when a previous certificate is in force, shall be in force for one year after the time when that certificate ceases to be in force, and if issued at a time when no previous certificate is in force shall be in force until the following first day of April.

(4) An application for a certificate of registration of a work may, in the case of the first registration of that work, be made at any time, and an application for any subsequent certificate in respect of that work shall be made in the month of January or February.

(5) A certificate of registration shall be issued on application being made in the prescribed manner (b) by the owner of the work, if the conditions of registration are complied with, and one of the conditions (c) in the case of the first registration of an alkali or scheduled work, or the registration of such a work if the work has been closed for a period of twelve months previously, shall be that the work is at the time of registration furnished with such appliances as appear to the chief inspector or, on appeal, to the Local Government Board (d) to be necessary in order to enable the work to be carried on in accordance with such of the requirements of this Act as apply to the work.

Provided that the Local Government Board (d) may dispense with the last-mentioned condition in the case of works erected before the commencement of this Act which were not before the commencement of this Act required to be registered.

(6) There shall be charged upon every such certificate a stamp duty of *five pounds* in the case of an alkali work, and of *three pounds* in the case of any other work, and the Commissioners of Inland Revenue shall issue stamped forms of certificate for the purpose (e).

(7) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to the Local Government Board (d), and the register and the certificate shall be altered accordingly in the prescribed manner (d) without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.

(8) The owner of a work which has been carried on in contravention of this section shall be liable to a fine not exceeding fifty pounds (f).

(a) See note (a) to s. 8, *ante*, p. 5006.

(b) Prescribed means prescribed by the Minister of Health. See s. 27, *post*, p. 5013.

(c) This condition and the proviso which follows are new.

(d) Now the Minister of Health (Ministry of Health Act, 1919).

(e) The Acts relating to stamp duties are not expressly applied as by s. 13 of the repealed Act of 1881, but they are nevertheless applicable. By s. 47 of the Finance Act, 1922 (16 Halsbury's Statutes 911), "five pounds" and "three pounds" are increased respectively to "ten pounds" and "six pounds."

(f) This fine is recoverable under s. 17, *post*, p. 5010, but is not subject to the three months' limitation thereby imposed.

Section 10.

(ii) INSPECTION.

Appointment of inspectors.

10.—(1) The Local Government Board (a) shall, with the approval of the Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they may fix) as the Board (a) think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors.

(2) Notice of the appointment of every such inspector shall be published in the London Gazette, and a copy of the Gazette shall be evidence of the appointment.

(3) The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Treasury may sanction, shall be paid out of moneys provided by Parliament.

(4) A person holding the office of chief inspector or inspector shall not be employed in any other work except with the sanction of the Local Government Board (a).

(5) In the case of the illness or other unavoidable absence of the chief inspector, the Local Government Board (a) may appoint any other inspector to act as his deputy, and the inspector so appointed shall, whilst so acting, have all the powers by or under this Act conferred on the chief inspector.

(a) Now the Minister of Health (Ministry of Health Act, 1919).

Disqualification of certain persons for inspectors.

11. A person who

(a) acts or practises as a land agent (a); or

(b) is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act; or

(c) is employed in or about or in connexion with any work to which this Act applies, or in any other chemical work for gain, shall be disqualified to act as an inspector under this Act.

(a) This is a term of no very definite meaning. A person who manages the landed estate of another is a land agent in common parlance, and such a person is doubtless referred to here, though there are persons in other positions who are called land agents.

Inspection of works.

12 (a).—(1) For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night without giving previous notice, but so as not to interrupt the process of the manufacture,

(a) enter and inspect any work to which, in the opinion of the Local Government Board (b) any of the provisions of this Act applies; and

(b) examine any process causing the evolution of any noxious or offensive gas (c) and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged; and

(c) ascertain the quantity of gas discharged into the atmosphere, condensed or otherwise dealt with; and

(d) enter and inspect any place where alkali is treated or deposited, or where any liquid containing either acid or any other substance (d)

capable of liberating sulphuretted hydrogen from alkali waste or drainage (d) therefrom; and **Section 12.**

- (e) apply any such tests and make any such experiments, and generally make all such inquiries, as seem to him to be necessary or proper for the execution of his duties under this Act (e).

(2) The owner of any such work shall, on the demand of the chief inspector, furnish him within a reasonable time with a sketch plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas or any process for the condensation of such gas or for preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged is carried on.

(3) The owner of every such work and his agents shall render to every inspector all necessary facilities for entry, inspection, examination, and testing in pursuance of this Act.

(4) Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be liable on conviction under the Summary Jurisdiction Acts (f) to a fine not exceeding ten pounds.

(a) This section is by s. 4 (3), P. H. (Smoke Abatement) Act, 1926, Vol. V. and 13 Halsbury's Statutes 1160, extended so as to enable the Minister to authorise the inspection of any work which in his opinion is of such a character as is likely to cause the evolution of any noxious or offensive gas notwithstanding that this Act does not apply to the works. The extension applies only to an inspector specially authorised by the Minister to inspect such works.

(b) Under the repealed statute the opinion of the L. G. B. (now the Minister of Health) was not referred to. The Minister's opinion is now conclusive for this purpose.

(c) Defined by s. 27, *post*, p. 5013.

(d) This is an extension of the corresponding provisions of s. 16 of the repealed Act of 1881.

(e) This clause was new. Under the repealed statute there was power simply to inquire into all matters which tended to show compliance or non-compliance with the Act, or which seemed necessary or proper for the execution of his duties, but no specific power to apply tests or make experiments.

(f) The application of the summary process for recovery of this fine was new.

13. The chief inspector shall, on or before the first day of March in every year, make a report in writing to the Local Government Board (a), of the proceedings of himself and of the other inspectors under this Act, and a copy of such report shall be laid before both Houses of Parliament (b). Annual report to Local Government Board (a).

(a) Now the Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189).

(b) It was thought unnecessary in this section to re-enact that the other inspectors should furnish the chief inspector with a detailed account of the number of inspectors of works in their district, and the recorded escapes of acid gases from such works during the preceding year, having regard to the general powers which the Minister of Health as successor to the L. G. B. possesses under s. 10, *ante*, p. 5008.

14.—(1) If any sanitary authority apply to the central authority (a) for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one half, the Local Government Board (b) may (if they see fit), with the sanction of the Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and to the same regulations and liabilities as other inspectors under this Act. Additional inspector on application of sanitary authorities.

Section 14. (2) The proportion of salary or remuneration aforesaid shall be paid at the prescribed times into the Exchequer, and shall be a debt due from the sanitary authority to the Crown (c).

(a) That is, the Minister of Health. See s. 27, *post*, p. 5013.

(b) Now the Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189).

(c) The effect is that the debt is recoverable by an immediate extent of the property of the local authority in case of default of payment on demand.

(iii) SPECIAL RULES.

Power of owners of works to make special rules.

15.—(1) The owner of an alkali work or of a scheduled work may, with the sanction of the central authority (a), make special rules for the guidance of his workmen who are employed in or in connexion with any process causing the evolution of any noxious or offensive gas, or in or in connexion with the condensation or other treatment of that gas, and may annex fines to any violation of such rules, so that the fine for any offence do not exceed two pounds.

(2) A printed copy of the special rules in force under this section in any work shall be given by the owner of that work to every person working or employed in or about that work who is affected thereby.

(3) Any fine incurred under this Act in respect of an offence against a special rule may be recovered in accordance with the Summary Jurisdiction Acts.

(a) That is, the Minister of Health. See s. 27, *post*, p. 5013.

(iv) PROCEDURE.

Provision as to calculation of acid.

16. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

Recovery of fines for offences against Act in county court.

17. The following regulations shall have effect with respect to the recovery of fines for offences under this Act other than fines recoverable summarily:—

(1) Every such fine (a) shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed :

(2) The action shall not be brought without the sanction of the central authority, nor by any person other than the chief inspector or such other inspector as the Local Government Board (b) may in any particular case direct, nor, except as respects a fine for the contravention of the provisions of this Act as to the registration of works (c), after the expiration of three months from the commission of the offence (d), and for the purposes of such action the fine shall be deemed to be a debt due to such inspector (e) :

(3) The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring the action, until the contrary is proved by the defendant (f) :

(4) The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just ; and the amount so awarded shall be deemed to be costs in the action :

(5) If either party in any action under this Act feels aggrieved by the decision or direction of the court in point of law, or on the merits (g), or in respect of the admission or rejection of any evidence, he may appeal to the High Court :

- (6) Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and to appeals shall apply as if the action related to a matter within the ordinary jurisdiction of the court. Section 17.

(a) The word "fine" seems hardly applicable to a sum which is to be recovered by civil proceedings. It is equivalent here to "penalty." This Act provides for maximum and not for fixed penalties, and does not point out who is to decide the proper amount. The fine is to be claimed as a debt, and it seems that the inspector should sue for the maximum amount, the judge of the court giving judgment for the amount he shall deem sufficient.

(b) Now Minister of Health.

(c) This exception was new. The fine in such case is a sum not exceeding £50, see s. 9 (8), *ante*.

(d) The offence may be continuing, or there may be a separate offence for every day it is continued. See for continuing offences, ss. 2 (2), 3 (2), 4 (2), 7 (2), *ante*, and ss. 1 (2), 6 (3), *ante*, and 18, *post*.

(e) As to the application of the fine, see s. 19, *infra*. There is no express provision for the costs of the inspector, but as he will be acting officially, it is presumed that the costs so far as not recovered from the defendant will be paid by the Treasury.

(f) It will therefore not be necessary for the inspector to produce the Gazette which according to s. 10 (2), *ante*, p. 5008, will be evidence of his appointment.

(g) This appears to signify the effect of the facts proved in evidence, but the term though in common use is indefinite, and may perhaps be considered to include the amount of the penalty.

18.—(1) In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule (a)— Further provisions as to recovery of fines in county court.

(a) It shall be sufficient to allege that any work is a work to which this Act applies, without more; and

(b) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

(2) A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

(3) Not less than twenty-one days before the hearing of any proceeding against an owner (b) to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means (b) as required by this Act, an inspector shall serve on the owner (b) proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognisance of the matter.

(4) A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

(a) As to special rules, see s. 15, *ante*, p. 5010.

(b) Defined by s. 27, *post*, p. 5013.

19. All fines recovered under this Act, other than those recovered summarily (a), shall be paid into the Exchequer. Application of fines.

(a) Fines recovered summarily include all fines in respect of offences against a special rule under s. 15, *ante*, p. 5010, or for obstruction under s. 12 (4), *ante*, p. 5009. The fines so recovered not being appropriated, must be paid to the county or borough treasurer

**Note to
Section 19.**

under the S. J. A., 1848, s. 31 (11 Halsbury's Statutes 289), and the Criminal Justice Administration Act, 1851, s. 11 (4 Halsbury's Statutes 526).

Receipts for fines whether recovered in the County Court, or summarily, are exempt from stamp duty (see the Revenue Act, 1898, s. 8 (16 Halsbury's Statutes 706); amending the Stamp Act, 1891, Schedule I. (16 Halsbury's Statutes 656)).

Discharge of
owner on con-
viction of actual
offender.

20. The owner (*a*) of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he proves to the satisfaction of the court before which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed, without his knowledge, consent, or connivance, by some agent servant or workman, whom he shall charge by name as the actual offender; in which case such agent servant or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act:

Provided that it shall be lawful for the inspector to proceed against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case where the inspector is satisfied that the owner has used all due diligence to comply with and to enforce the provisions of this Act, and that the offence has been committed by that person without the knowledge, consent, or connivance of the owner (*b*).

(*a*) Defined by s. 27, *post*, p. 5013.

(*b*) Compare the Locomotives Act, 1898, s. 13 (2), *ante*, p. 4944, the Factories Act 1937, ss. 136 and 137, *ante*, p. 1521, and the Food and Drugs Act, 1938, s. 83, *ante*, p. 1428'.

Service of
notices.

21. Any notice, summons, or other document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by post or by delivering the same to the owner or at his residence or works; and the document shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner (*a*).

(*a*) Compare s. 285 of the P. H. A., 1936, *ante*, p. 576.

Complaint by
sanitary au-
thority in cases
of nuisances.

22.—(1) Where complaint is made to the central authority (*a*) by any sanitary authority (*a*), on information given by any of their officers, or any ten inhabitants of their district, that any work to which this Act applies is carried on (either within or without the district) in contravention of this Act, or that any alkali waste is deposited or discharged (either within or without the district) in contravention of this Act, and that a nuisance is occasioned thereby to any of the inhabitants of their district, the central authority shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think fit and just.

(2) The sanitary authority (*a*) complaining shall, if so required by the central authority, pay the expense of any such inquiry (*b*).

(*a*) Defined by s. 27, *post*, p. 5013.

(*b*) As to the fund out of which these expenses are payable, see now L.G.A., 1933, *ante*.

Actions in case
of contributory
nuisance.

23.—(1) Where a nuisance arising from the discharge of any noxious or offensive gas (*a*) or gases is wholly or partially caused by the acts or defaults of the owners (*a*) of several works to which any of the provisions of this Act

applies, any person injured by such nuisance may proceed against any one or more of such owners, and may recover damages from each owner made a defendant in proportion to the extent of the contribution of that defendant to the nuisance, notwithstanding that the act or default of that defendant would not separately have caused a nuisance (b).

(2) This section shall not authorise the recovery of damages from any defendant who can produce a certificate from the chief inspector that in the works of that defendant the requirements of this Act have been complied with and were complied with when the nuisance arose.

(a) Defined by s. 27, *infra*.

(b) See note (m), *ante*, p. 4583.

(v) MISCELLANEOUS.

24. [*This section was repealed by the L. G. A., 1933, ante, p. 1288.*]

25. In determining any matter which under this Act is to be determined by the chief inspector, the chief inspector may found his opinion on facts disclosed by his own examination, or by an examination by any other inspector.

Expenses of sanitary authorities.

Determination of questions by chief inspector.

26.—[*Temporary provision as to the over-heat pan process (a).*]

(a) This section which was spent was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

27.—(1) In this Act, unless the context otherwise requires—
The expression “alkali work” means every work for—

Interpretation of terms.

(a) the manufacture of sulphate of soda or sulphate of potash, or

(b) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed,

in which muriatic acid gas is evolved :

The expression “noxious or offensive gas” includes the following gases and fumes (a) :—

Muriatic acid ;

Sulphuric acid ;

Sulphurous acid, except that arising solely from the combustion of coal ;

Nitric acid and acid-forming oxides of nitrogen ;

Sulphuretted hydrogen ;

Chlorine, and its acid compounds ;

Fluorine compounds ;

Cyanogen compounds ;

Bisulphide of carbon ;

Chloride of sulphur ;

Fumes from cement works ;

Fumes containing copper, lead, antimony, arsenic, zinc, or their compounds ;

Fumes from tar works :

The expression “owner” includes any lessee, occupier, or any other person carrying on any work to which this Act applies :

The expression “best practicable means,” where used with respect to the prevention of the escape of noxious and offensive gases, has reference not only to the provision and the efficient maintenance of appliances adequate for preventing such escape, but also to the manner in which such appliances are used and to the proper supervision, by the owner, of any operation in which such gases are evolved :

The expression “prescribed” means prescribed by the Local Government Board (b) :

The expression “Local Government Board” means the Local Government Board established by the Local Government Board Act, 1871 (b) :

34 & 35 Vict.
c. 70

Section 27. The expression "central authority" means as regards England the Local Government Board (c) :

The expression "sanitary authority" means any local authority entrusted with the execution of the Public Health Act :

38 & 39 Vict.
c. 55.
54 & 55 Vict.
c. 76.

The expression "the Public Health Act" means as regards England the Public Health Act, 1875, or in the case of London the Public Health (London) Act, 1891 (c) ; and includes any enactment amending those Acts.

(2) Nothing in this Act shall be construed as exempting any work from any of the provisions of this Act applicable to the work as being a work of a certain class or description by reason only that the work is subject to other provisions of this Act as being a work of some other class or description.

(a) The list contained in this section has been extended by order of the Minister of Health under the P. H. (Smoke Abatement) Act, 1926, s. 4 (1), Vol. V. and 13 Halsbury's Statutes 1159 ; see the Alkali, etc., Works Order, 1935 (S. R. & O., 1935, No. 162).

(b) The Local Government Board has now been superseded by the Minister of Health (Ministry of Health Act, 1919, *post*, p. 5189, and Order in Council made thereunder). The definition in the text was accordingly repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(c) Words here following are omitted as relating only to Scotland or Ireland.

28. [*Application to Scotland*] (a).

(a) See note (c) to s. 27, *supra*.

Saving as to
general law.

29. Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action, indictment, or otherwise, to which he would have been entitled if this Act had not passed (a).

(a) Compare the Gasworks Clauses Act, 1847, s. 29, *ante*, p. 4172.

Repeals.

30. *The Acts specified in the second schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule (a).*

Provided that—

(a) Nothing in this Act shall affect any certificate, special rule, or notice issued, made, or served before the commencement of this Act in pursuance of any enactment so repealed, but every such certificate, special rule, and notice shall continue in force as if issued, made, or served in pursuance of this Act ; and

(b) Nothing in this Act shall affect the tenure of office of any inspector appointed under any enactment so repealed, but every such inspector shall hold office as if appointed under this Act ; and

(c) Nothing in this Act shall affect any liability of a sanitary authority incurred under any enactment so repealed to pay any proportion of the salary or remuneration of an additional inspector.

(a) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Short title and
commencement.

31. This Act may be cited as the Alkali, etc., Works Regulation Act, 1906, *and shall come into operation on the first day of January nineteen hundred and seven (a).*

(a) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

SCHEDULES.

FIRST SCHEDULE.

LIST OF WORKS (a).

1. Sulphuric acid works, that is to say, works in which the manufacture of sulphuric acid is carried on by the lead chamber process, namely, the process by which

Sections, 6, 7.

sulphurous acid is converted into sulphuric acid by the agency of oxides of nitrogen and by the use of a lead chamber.

2. Sulphuric acid (Class II.) works, that is to say, works in which the manufacture of sulphuric acid is carried on by any process other than the lead chamber process, and works for the concentration or distillation of sulphuric acid.

3. Chemical manure works, that is to say, works in which the manufacture of chemical manure is carried on, and works in which any mineral phosphate is subjected to treatment involving chemical change through the application or use of any acid.

4. Gas liquor works, that is to say, works (not being sulphate of ammonia works or muriate of ammonia works) in which sulphuretted hydrogen or any other noxious or offensive gas is evolved by the use of ammoniacal liquor in any manufacturing process, and works in which any such liquor is desulphurised by the application of heat in any process connected with the purification of gas.

5. Nitric acid works, that is to say, works in which the manufacture of nitric acid is carried on and works in which nitric acid is recovered from oxides of nitrogen.

6. Sulphate of ammonia works and muriate of ammonia works, that is to say, works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on.

7. Chlorine works, that is to say, works in which chlorine is made or used in any manufacturing process.

8. Muriatic acid works, that is to say—

- (a) Muriatic acid works, or works (not being alkali works as defined in this Act) where muriatic acid gas is evolved either during the preparation of liquid muriatic acid or for use in any manufacturing process;
- (b) Tin plate works, that is to say, works in which any residue or flux from tin plate works is calcined for the utilisation of such residue or flux, and in which muriatic acid gas is evolved; and
- (c) Salt works, that is to say, works (not being works in which salt is produced by refining rock salt, otherwise than by the dissolution of rock salt at the place of deposit) in which the extraction of salt from brine is carried on, and in which muriatic acid gas is evolved.

9. Sulphide works, that is to say, works in which sulphuretted hydrogen is evolved by the decomposition of metallic sulphides, or in which sulphuretted hydrogen is used in the production of such sulphides.

10. Alkali waste works, that is to say, works in which alkali waste or the drainage therefrom is subjected to any chemical process for the recovery of sulphur or for the utilisation of any constituent of such waste or drainage.

11. Venetian red works, that is to say, works for the manufacture of Venetian red, crocus, or polishing powder, by heating sulphate or some other salt of iron.

12. Lead deposit works, that is to say, works in which the sulphate of lead deposit from sulphuric acid chambers is dried or smelted.

13. Arsenic works, that is to say, works for the preparation of arsenious acid, or where nitric acid or a nitrate is used in the manufacture of arsenic acid or an arseniate.

14. Nitrate and chloride of iron works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of nitrate or chloride of iron.

15. Bisulphide of carbon works, that is to say, works for the manufacture of bisulphide of carbon.

16. Sulphocyanide works, that is to say, works in which the manufacture of any sulphocyanide is carried on by the reaction of bisulphide of carbon upon ammonia or any of its compounds.

17. Picric acid works, that is to say, works in which nitric acid or a nitrate is used in the manufacture of picric acid.

18. Paraffin oil works, that is to say, works in which crude shale oil is refined.

19. Bisulphite works, that is to say, works in which sulphurous acid is used in the manufacture of acid sulphites of the alkalis or alkaline earths.

20. Tar works, that is to say, works where gas tar or coal tar is distilled or is heated in any manufacturing process.

Sched. I.

21. Zinc works, that is to say, works in which, by the application of heat, zinc is extracted from the ore, or from any residue containing that metal.

(a) This list has been added to by an order of 1935 made by the Minister of Health under the P. H. (Smoke Abatement) Act, 1926, s. 4 (1), Vol. V. and 13 Halsbury's Statutes 1159; see Alkali, etc., Works Order, 1935.

Section 30.

SECOND SCHEDULE (a).

REPEALS.

Session and Chapter.	Short Title.	Extent of Repeal.
44 & 45 Vict. c. 37 .	<i>The Alkali, etc., Works Regulation Act, 1881.</i>	<i>The whole Act.</i>
47 & 48 Vict. c. cxlvii.	<i>The Local Government Board's Provisional Order Confirmation (Salt Works) Act, 1884.</i>	<i>The whole Act.</i>
55 & 56 Vict. c. 30 .	<i>The Alkali, etc., Works Regulation Act, 1892.</i>	<i>The whole Act.</i>

(a) This Schedule was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

OPEN SPACES ACT, 1906.

(6 EDW. 7, c. 25) (a).

An Act to consolidate Enactments relating to Open Spaces. [4th August, 1906.]

LOCAL AUTHORITIES.

Local
authorities.

1. Each of the following bodies shall be a local authority for the purposes of this Act, namely—

The council of any county, of any municipal or metropolitan borough, or of any district :

The common council of the city of London :

Any parish council invested with the powers of this Act by an order of the council of the county within which the parish is situate.

(a) This Act repeals and consolidates with amendments the whole of the previous legislation on the subject except so much of s. 4 of the Open Spaces Act, 1887, as amends the Disused Burial Grounds Act, 1884, *ante*, pp. 4699, 4694. It should, however, be considered with Part VI. of the P. H. A. A. A., 1907, *post*, p. 5053, and Part VI. of the P. H. A., 1925, Vol. V., *post*.

Part V. of the L. C. C. (G. P.) Act, 1935 (28 Halsbury's Statutes 151), relates to "open spaces" and (*inter alia*) "disused burial grounds," which terms are defined in language differing, verbally at least, from the definitions in the present Act, *post*, p. 5024. Under the Act of 1935, the L. C. C. or the council of a metropolitan borough can, outside as well as inside the county of London, make and maintain open air baths and swimming pools, places for dancing, golf courses, gymnasia, and rifle ranges; contribute towards bands, provide concerts, pageants, facilities for skating, and swings; and erect for these purposes buildings and do or forbid the doing of various other things, in open spaces vested in such councils or controlled or managed by them. These powers are parallel to, although wider (or at least more specific) than, the powers of the Acts of 1907 and 1925 cited in the preceding note, and it may therefore be useful to refer to a judgment of the Consistory Court for London, upon the relation between the Act of 1935 and the previous law affecting disused burial grounds (St. Dunstan, Stepney), at p. 8 of "The Times" newspaper for 21st June, 1937, in which the learned Chancellor considered the case of *Shrewsbury (Earl) v. Scott* (1859), 6 C. B. N. S. 2; especially per BYLES, J., *ibid.* 219.

POWER TO TRANSFER OPEN SPACES AND BURIAL GROUNDS TO
LOCAL AUTHORITIES.Power of
trustees under
local Act
to transfer

2.—(1) Where an open space (b) is, in pursuance of a local or private Act of Parliament, placed under the care and management of trustees or other persons (in this section referred to as trustees), with a view to the

preservation and regulation thereof as a garden or open space, the trustees may, in pursuance of a special resolution (c), and with the consent, signified by a special resolution (c), of the owners (b) and occupiers (b) of any houses which front upon the open space, or of which the owners and occupiers are liable to be specially rated for the maintenance of the open space—

Section 2.

open spaces to local authority or admit other persons to enjoyment thereof (a).

- (a) convey, for or without any consideration, to any local authority, their estate or interest in the open space or, if they have no such estate or interest, transfer to any local authority the entire care and management of the open space, to the end that the space may be preserved for the enjoyment of the public; or
- (b) grant, for or without any consideration, to any local authority any term of years or other limited interest in or any right or easement over the open space; or
- (c) make any agreement with any local authority for the opening to the public of the open space and the care and management thereof by the local authority, either at all times or at any specified time or times; or
- (d) notwithstanding anything in the Act or any instrument under which the trustees are constituted or act, admit persons not owning, occupying, or residing in any house fronting on the open space to the enjoyment of the open space, either at all times or at any specified time or times, and regulate the admission of such persons thereto on such terms and conditions as the trustees think proper.

(2) Where the freehold of the open space and the freehold of all or the greater part of the houses round the open space are vested in the same person the powers conferred by this section shall not be exercised without the consent of that person.

(3) Any such conveyance, transfer, grant, or agreement shall be made, if the trustees are a corporation, by an instrument under the common seal of the trustees, and if the trustees are not a corporation, by an instrument under the hands and seals of any five of the trustees, or of all the trustees if for the time being they are less than five in number.

(4) Any conveyance, transfer, grant, or agreement under this section shall be deemed a good execution of the trusts, powers, and duties imposed or conferred upon the trustees by the Act or instrument under which they are constituted or act, and where the trustees convey their entire interest in, or transfer the entire care and management of, the open space they shall, on the execution of the conveyance or transfer, be relieved and discharged from all trusts, powers, and duties under the Act or instrument or otherwise with reference to the open space.

(5) The trustees shall hold any purchase money or rent paid for or in respect of the open space in trust for the benefit of the persons or class of persons for whose benefit the open space was previously preserved and managed by the trustees, or, as the case may be, for the benefit of the objects to which any rates previously imposed in respect of the open space had been applied, and such persons or class of persons shall be discharged either absolutely, or, if the grant was for a term of years or other limited interest, during the continuance of that interest, from any special rate or other obligation previously imposed on them in respect of the open space.

(a) This section reproduces s. 2 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

(b) Defined by s. 20, *post*, p. 5024.

(c) As to special resolutions and consents, see s. 8, *post*, p. 5020.

3.—(1) Where any land is held by trustees (not being trustees elected or appointed under any local or private Act of Parliament) upon trust for the

Transfer to local authority of spaces held

Section 3.
by trustees
for purpose
of public
recreation (a).

purposes of public recreation, the trustees may, in pursuance of a special resolution (b), transfer the land to any local authority by a free gift absolutely or for a limited term, and, if the local authority accept the gift, they shall hold the land on the trusts and subject to the conditions on and subject to which the trustees held the same, or on such other trusts and subject to such other conditions (so that the land be appropriated to the purposes of public recreation) as may be agreed on between the trustees and the local authority with the approval of the Charity Commissioners.

(2) Subject to the obligation of the land so transferred being used for the purposes of public recreation, the local authority may hold the land as and for the purposes of an open space under this Act.

(a) This section reproduces s. 3 of the Open Spaces Act, 1890.

(b) See s. 8, *post*, p. 5020.

Transfer by
charity trustees
of open space
to local
authority (a).

4.—(1) Where an open space is vested in trustees, other than such as are mentioned in the foregoing provisions of this Act, for any charitable purpose and as part of their trust estate, and it appears to the majority of the trustees that the open space is no longer required for the purposes of their trust, or may with advantage to the trust be dealt with under this section, the trustees may, in pursuance of a special resolution (b), and where the open space is subject to the Charitable Trusts Acts, 1853 to 1894 (c), with such authority or approval (d) as is required by those Acts for a sale of the open space, and in other cases in pursuance of an order of the court to be obtained as hereinafter provided, convey or demise the open space to any local authority on such terms as they may agree, and the local authority shall thenceforth be entitled to hold the same as an open space on the terms and under the conditions specified in the conveyance or demise, or on such terms or under such conditions as may be so authorised or approved, or as the court may from time to time order, as the case may be.

(2) The court for the purposes of this section shall be either the High Court or the county court of the district in which the whole or any part of the open space is situate.

(3) An order of the court for the purposes of this section may be made upon application by the trustees, in manner directed by rules of court, and the court, before making any order, may direct such inquiries to be made, such consents to be obtained, and notice to be given to such persons, as to the court seem expedient, and may make such order thereon as in the discretion of the court appears proper.

(a) This section reproduces s. 4 of the Open Spaces Act, 1890.

(b) See s. 8, *post*, p. 5020.

(c) These Acts are as follows: the Charitable Trusts Acts, 1853; 1855; 1860; 1862; 1869; 1887, and the Charity Trusts (Recovery) Act, 1891 (2 Halsbury's Statutes 320, 346, 363, 370, 372, 382, 394). Trustees of charities also have the powers of a tenant for life under a settlement subject to the jurisdiction of the court, the charity commissioners or other competent authority (Settled Land Act, 1925, s. 29 (3) (17 Halsbury's Statutes 869).

(d) The authority or approval required seems to be that of the Charity Commissioners under s. 24 of the Charitable Trusts Act, 1853 (2 Halsbury's Statutes 328), or under an Act of Parliament or under the authority of a court or according to a scheme legally established (s. 29 of the Charitable Trusts Act, 1855 (*op. cit.* 353), and *In re Mason's Orphanage & London & North Western Rail. Co.*, [1896] 1 Ch. 596, *per* LINDLEY, L.J., at p. 601; 8 Digest 356, 1543).

Transfer to
local authority
by owners of
open spaces
subject to
rights of
user (a).

5.—(1) Where any open space (b) is subject to rights of user for exercise and recreation in the owners (b) or occupiers (b), or both, of any houses round or near the same, whether the rights are secured by covenant or not, the owner of the open space may, with the consent, signified by a special resolution (c), of such owners or occupiers, or both, as the case may require,—

(a) convey to any local authority his estate or interest in the open space in
- trust for the enjoyment of the public; or

(b) grant to any local authority in trust as aforesaid any term of years or other limited interest in or any right or easement over the open space ; Section 5.
or

(c) make an agreement with any local authority for the opening to the public of the open space and the care and management thereof by the local authority either at all times or at any specified times :

and thereupon the owner shall be discharged from any liability to any person entitled to any right of user in respect of any act done in accordance with the consent so given.

(2) Where any person has any term of years or other limited interest in any such open space this section shall apply to him with reference to that interest in like manner as it applies to the owner of the open space.

(3) Where any open space is used as a place of exercise and recreation for the inhabitants of certain houses, and the property and right of user is vested in one or more persons as owners or occupiers of the houses, those owners and occupiers (if any) may convey to a local authority in trust for the public a right to enter upon, use, and enjoy the open space subject to such terms and conditions as may be agreed upon.

(a) Sub-ss. (1) and (2) of this section are taken from s. 3 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

Sub-s. (3) is taken from s. 2 of the Metropolitan Open Spaces Act, 1877, as extended by the Open Spaces Act, 1887.

(b) Defined by s. 20, *post*, p. 5024.

(c) See s. 8, *post*, p. 5020.

6. The owner (a) of any disused burial ground (a) may convey the burial ground to, or grant any term of years or other limited interest therein to, or make any agreement with, any local authority for the purpose of giving the public access to the burial ground, and preserving the same as an open space accessible to the public and under the control of the local authority, and for the purpose of improving and laying out the same. Transfer of disused burial grounds to local authority (b).

(a) Defined by s. 20, *post*, p. 5024.

(b) This section is taken from s. 4 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

A faculty was granted and a transfer made under the earlier Act in *Re Mount Street, Hanover Square, Burial Ground* (1888), 4 T. L. R. 661.

For a case in which terms were imposed upon the grant of a faculty, see *Bermondsey B. C. v. Mortimer*, [1926] P. 87 ; Digest Supp.

7.—(1) Any corporation (other than a municipal corporation) or persons having power, either with or without the consent of any other corporation or persons, to sell any land may, but with the like consent (if any), convey, for or without any consideration, to any local authority that land, or any part thereof, for the purpose of the same being preserved as an open space for the enjoyment of the public under this Act, and may so convey the same with or without conditions, and the local authority may accept the land for that purpose, and, if conditions are imposed, subject to such conditions. Power of corporation, etc., to convert land for open space (a).

(2) Where a corporation having power under this section to convey land are themselves a local authority, this section shall enable the authority to appropriate their land as an open space for the enjoyment of the public, and shall, with the necessary modifications, apply to the appropriation in like manner as it applies to the conveyance.

(3) Every parish council shall be a local authority for the purposes of this section.

(a) This section is taken from s. 7 of the Open Spaces Act, 1887, as extended by s. 17 (3) of the Commons Act, 1889.

**Note to
Section 7.**

Sanitary authorities have power to sell land under s. 165 of the L. G. A., 1933, *ante*, p. 993. Instead of selling such land they may under this section appropriate it as an open space. As to education authorities appropriating land for non-educational purposes, see s. 114, Education Act, 1921 (7 Halsbury's Statutes 191).

Special resolutions and consents (a).

8.—(1) A resolution shall for the purposes of this Act be a special resolution (a) when it has been—

- (a) passed by a majority of at least two-thirds of the persons present at a meeting summoned as hereinafter provided; and
- (b) confirmed by another resolution passed by a majority of at least two-thirds of the persons present at a meeting summoned as hereinafter provided and held after an interval of not less than one month from the first meeting.

(2) A meeting of trustees for the purposes of this Act shall be summoned by a notice stating generally the object of the meeting, which notice shall be left at, or sent by post, at least one month before the date of the meeting, to the last known or usual place of abode of each trustee.

(3) A meeting of owners and occupiers of houses under this Act shall be summoned by a notice stating generally the object of the meeting, which notice shall be left at, or sent through the post to, each of such houses, at least one month before the date of the meeting, and shall be inserted as an advertisement at least three times in any two or more papers circulating in the neighbourhood.

(4) If at any meeting of trustees or of owners and occupiers under this Act a resolution with respect to an open space is rejected, no meeting of the trustees, or, as the case may be, the owners or occupiers, shall be called or held with the same object and with respect to the same open space until the expiration of three years from the date of the rejection.

(5) A meeting of owners or occupiers of houses for the purposes of this Act shall not be held between the first day of August in one year and the thirty-first day of January in the following year.

(a) Special resolutions are required under ss. 2, 3, 4 and 5, *ante*.

This section re-enacts similar provisions of s. 2 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

POWERS OF LOCAL AUTHORITIES WITH RESPECT TO OPEN SPACES AND BURIAL GROUNDS.

Power of local authority to acquire open space or burial ground (a).

9. A local authority may, subject to the provisions of this Act,—

- (a) acquire by agreement and for valuable or nominal consideration by way of payment in gross, or of rent, or otherwise, or without any consideration, the freehold of, or any term of years (b) or other limited estate or interest in or any right or easement in or over, any open space or burial ground (c), whether situate within the district of the local authority or not; and
- (b) undertake the entire or partial care, management, and control of any such open space or burial ground, whether any interest in the soil is transferred to the local authority or not; and
- (c) for the purposes aforesaid, make any agreement with any person authorised by this Act or otherwise to convey or to agree with reference to any open space or burial ground, or with any other persons interested therein.

(a) This section is taken from the first paragraph of s. 5 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

(b) Where a vestry acquired the residue of a term of twenty-six years in an open space by assignment of the lease creating the term, it was held that they were "owners" within the meaning of s. 250 of the Metropolitan Management Act, 1855 (11 Halsbury's Statutes 946) (*St. Mary, Islington, Vestry v. Cobbett*, [1895] 1 Q. B. 369; 26 Digest 492, 2022).

On the other hand, in *London C. C. v. Wandsworth Borough Council*, [1903] 1 K. B. 797; 67 J. P. 215; 26 Digest 492, 2024, the Court of Appeal held that the county council were not owners of a common vested in them by statute as a public recreation ground, and overruled the case of *Fulham Vestry v. Minter*, [1901] 1 K. B. 501; 65 J. P. 180; 26 Digest 492, 2023, where it had been held that the vestry were owners of an open space acquired by them under the powers conferred by the Open Spaces Acts, 1877 and 1881.

(c) Defined by s. 20, *post*, p. 5024.

Note to Section 9.

10. A local authority who have acquired any estate or interest in or control over any open space or burial ground (b) under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—

Maintenance of open spaces and burial grounds by local authority (a).

(a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and

(b) maintain and keep the open space or burial ground in a good and decent state (c),

and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purposes aforesaid or any of them.

(a) This section is taken from the second paragraph of s. 5 of the Metropolitan Open Spaces Act, 1881, as amended by s. 7 of the Open Spaces Act, 1890, and extended by the Open Spaces Act, 1887.

But there is also an important amendment here introduced for the first time by the omission of the words "free from buildings," which occurred in the original enactment. These words had given rise to considerable litigation in the case of *Paddington Corporation v. Att.-Gen.*, [1906] A. C. 1; 70 J. P. 41; 7 Digest 553, 300, where it was held that the local authority were entitled, notwithstanding those words, to prevent by the erection of a screen or other suitable means anything which might interfere with the free use by the public of the open space, and to prevent the acquisition of an easement of light or other adverse right over such space by an adjoining owner. The effect of the omission of these words, "free from buildings," is to leave the local authority clearly at liberty to erect on an open space buildings conducive to the public enjoyment of the open space as such, but presumably (see s. 20), such buildings should not occupy more than one-twentieth of the whole area. The restriction as to the erection of buildings on disused burial grounds imposed by s. 3 of the Disused Burial Grounds Act, 1884, *ante*, p. 4694, is not affected by this section (*Bermondsey B. C. v. Mortimer*, [1926] P. 87; Digest Supp.), but as regards open spaces in London (or outside, if owned, controlled or managed by the L. C. C. or a M. B. C.) see the local Act cited in notes to s. 1, *ante*, p. 5016.

(b) Defined by s. 20, *post*, p. 5024.

(c) The erection of a caretaker's lodge may be justified under this provision (*Att.-Gen. v. Poole Corporation*, [1938] 1 Ch. 23; [1937] 3 All E. R. 608; Digest Supp.).

11.—(1) A local authority shall not exercise any of the powers of management under this Act with reference to any consecrated burial ground (a) unless and until they are authorised to do so by the licence or faculty of the bishop (b).

Special provisions as to management of burial grounds and removal of tombstones.

(2) The playing of any games or sports shall not be allowed in any burial ground in or over which a local authority have acquired any estate, interest, or control under this Act, except that—

(a) in the case of a consecrated burial ground, the bishop by licence or faculty; and

(b) in the case of any burial ground which is not consecrated, the persons from whom the local authority have acquired the estate, interest, or control in or over the same

may expressly sanction any such use of the burial ground, and may specify any conditions as to the extent or nature of such use (c).

(3) In the case (d) of any disused burial ground (e), at least three months before removing or changing the position of any tombstone or monument, a local authority shall—

Section 11.

- (a) prepare a statement sufficiently describing by the name and date appearing thereon the tombstones and monuments standing or being in the ground, and such other particulars as may be necessary, and shall cause this statement to be deposited with the clerk of the local authority, and to be open to inspection by all persons; and
- (b) insert an advertisement of the intention to remove or change the position of such tombstones and monuments three times at least in some newspaper circulating in the neighbourhood, and by that advertisement give notice of the deposit of the statement hereinbefore described, and of the place at which and the hours within which the same may be inspected; and
- (c) place a notice in terms similar to the advertisement on the door of the church (if any) to which the burial ground is attached, and deliver or send by post a notice to any person known or believed by the local authority to be a near relative of any person whose death is recorded on any such tombstone or monument.

(4) In the case of a consecrated ground, no tombstone or monument shall be removed or its position changed without a licence or faculty from the bishop, and no application for such licence or faculty shall be made until the expiration of one month at least after the appearance of the last of such advertisements as aforesaid:

Provided that on an application for a licence or faculty nothing shall prevent the bishop from directing or sanctioning the removal or change of position of any tombstone or monument, if he is of opinion that reasonable steps have been taken to bring the intention to effect such removal or change of position to the notice of some person having a family interest in the tombstone or monument.

(5) A licence or faculty for the purposes of this section may be granted by the bishop of the diocese within which the consecrated burial ground is situate on the application of the local authority who have acquired any estate, interest, or control in or over the burial ground, and may be granted subject to such conditions and restrictions as to the bishop may seem fit (f).

(a) Defined by s. 20, *post*, p. 5024.

(b) This sub-section is taken from the proviso to s. 5 of the Metropolitan Open Spaces Act, 1881.

Faculties were granted under that section in *Re Mound Street, Hanover Square, Burial Ground* (1888), 4 T. L. R. 661; *Re St. George-the-Martyr, Queen Square* (1888), 4 T. L. R. 703, and for filling up vaults out of repair in *Vicar of St. Botolph-without-Aldgate v. Parishioners*, [1892] P. 173; 7 Digest 555, 322.

(c) This sub-section is taken from sub-s. (2) of s. 2 of the Open Spaces Act, 1887. See *Re Camden Town Burial Ground* (1889), 5 T. L. R. 311, and *Bermondsey B. C. v. Mortimer*, *ante*, p. 5021.

(d) This sub-section is taken from s. 3 of the Open Spaces Act, 1887.

(e) See note (a) to s. 10, *ante*, p. 5021.

(f) This sub-section is taken from the proviso to s. 5 of the Metropolitan Open Spaces Act, 1881.

Powers over open spaces and burial grounds already vested in local authority.

12. A local authority may exercise all the powers given to them by this Act respecting open spaces and burial grounds transferred to them in pursuance of this Act in respect of any open spaces and burial grounds of a similar nature which may be vested in them in pursuance of any other statute, or of which they are otherwise the owners (a).

(a) This section is taken from s. 11 of the Open Spaces Act, 1887. It will be available where an open space has been vested in a local authority on some title which does not confer a power of spending rate moneys or of making byelaws, but in practice the chief use made of it has been where a local authority has had control of a ground governed by the Recreation Grounds Act, 1859. Section 6 of that Act (12 Halsbury's Statutes 370) gives a power to make byelaws, requiring approval by the Charity Commissioners, but it gives no power to impose penalties recoverable in a court of summary jurisdiction for contravention of

the byelaws. By agreement between the Charity Commissioners and the L. G. B. and M. of H., s. 12 of the Act of 1906 has been used in such cases. It is, of course, available equally in other cases, but the L. G. B. and M. of H. have not as confirming authority for byelaws under sub-section (2) of s. 15, *post*, p. 5023, considered it proper, by using this section in conjunction with s. 14, to close a pleasure ground provided under the Public Health Acts, on days when it could not be closed under those Acts standing alone: *vide*, s. 44 of the P. H. A. A. A., 1890, *ante*, p. 4818.

**Note to
Section 12.**

13. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting an open space or burial ground shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by anything done under this Act without compensation being made for the same; and such compensation shall be paid by the local authority by whom the estate, interest, or right is taken away or injuriously affected, and shall, in case of difference, be ascertained and provided in the same manner as if the same were compensation for lands purchased and taken otherwise than by agreement of injuriously affected under the Lands Clauses Acts (*a*). Provision for compensation.

(*a*) This section is taken from s. 9 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

See the Lands Clauses Consolidation Act, 1845, *ante*, p. 4104, and notes.

14. A county council may purchase or take on lease, lay out, plant, improve, and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever (*a*). Power of county councils as to public walks or pleasure grounds.

(*a*) This section is an extension of s. 12 of the Open Spaces Act, 1887.

15.—(1) A local authority may, with reference to any open space or burial ground in or over which they have acquired any estate, interest, or control under this Act, make byelaws for the regulation thereof, and of the days and times of admission thereto (*aa*), and for the preservation of order and prevention of nuisances therein, and may by such byelaws impose penalties recoverable summarily for the infringement thereof, and provide for the removal of any person infringing any byelaw by any officer of the local authority or police constable. Byelaws (*a*).

(2) All byelaws made under this Act by any local authority shall be made—

- (*a*) in the case of a county council other than the London County Council, subject and according to the provisions of section sixteen of the Local Government Act, 1888 (*b*); and 51 & 52 Vict. c. 41.
- (*b*) in the case of the London County Council, subject and according to the provisions of sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, as modified with respect to parks and open spaces by the London Council (General Powers) Act, 1890, and the London County Council (General Powers) Act, 1898 (*c*); and 18 & 19 Vict. c. 120.
53 & 54 Vict. c. cxxlii.
61 & 62 Vict. c. cxxxi.
- (*c*) in the case of the Common Council of the City of London, subject and according to the Corporation of London (Open Spaces) Act, 1878 (*d*); and 41 & 42 Vict. c. cxxvii.
- (*d*) in the case of a council of a metropolitan borough, subject and according to the provisions of sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855 (*c*); and
- (*e*) in the case of a municipal borough or district or parish council, subject and according to the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*b*), and those sections shall apply to a parish council in like manner as if they were a local authority within the meaning of that Act, except that byelaws made by a parish council need not be under common seal. 38 & 39 Vict. c. 55.

(3) The trustees or other persons having the care and management of any open space, who in pursuance of this Act admit to the enjoyment of the open

Section 15. space any persons not owning, occupying, or residing in any house fronting thereon, shall have the same powers of making byelaws as are conferred on a committee of the inhabitants of a square by section four of the Town Gardens Protection Act, 1863 (e), and that section shall apply accordingly.

26 & 27 Vict.
c. 13.

(a) This section is taken from s. 1 of the Metropolitan Open Spaces Act, 1877, as extended by s. 6 of the Metropolitan Open Spaces Act, 1881, and by s. 5 of the Open Spaces Act, 1887.

As to the existing byelaws, see s. 23 (a), *post*, p. 5025.

(aa) See note on s. 12, *ante*, p. 5022.

(b) See now L. G. A., 1933, s. 250, *ante*, p. 01104.

(c) Now s. 147 of the London Government Act, 1939; 32 Halsbury's Statutes 328: for the repeal of the sections in the text, *vide* note *ibid.* 329, and also note at 27 Halsbury's Statutes 423.

(d) See now s. 6 (1) (a) of the Minister of Works and Planning Act, 1942.

(e) *Ante*, p. 4255.

Power of local
authorities to
act jointly.

16. Any two or more local authorities may jointly carry out the provisions of this Act and may make any agreement on such terms as may be arranged between them for so doing and for defraying the expenses of the execution of this Act, and any local authority may defray the whole or any part of the expenses incurred by any other local authority in the execution of this Act (a).

(a) This section is taken from s. 7 of the Metropolitan Open Spaces Act, 1881, as extended by the Open Spaces Act, 1887.

Expenses of
local
authorities.

17. The expenses of a local authority incurred in the execution of this Act may be defrayed—

(a) . . . (a).

(b) in the case of a metropolitan borough council, as expenses of that council;

(c) . . . (a).

(d) in the case of a rural district council, as special expenses . . . (b);

(e) . . . (a).

(a) Paragraph repealed by the L. G. A., 1933, *ante*, p. 735.

(b) Certain words were repealed by the L. G. A., 1933; as regards special expenses of rural district councils, see s. 190 of that Act, *ante*, p. 1016.

Borrowing.

18. A local authority may borrow for the purposes of this Act . . . in the case of a metropolitan borough council as for the purposes of the Metropolitan Management Acts, 1855 to 1893; . . .

Certain words in this section were repealed by the L. G. A., 1933, *ante*, p. 735.

SUPPLEMENTAL.

Savings.

19. This Act shall not apply to—

(a) the royal parks; nor

(b) any land belonging to His Majesty in right of His Crown or of His Duchy of Lancaster; nor

(c) any garden, ornamental ground, or ornamental land for the time being under the management of the Commissioners of Works or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851; nor

(d) any metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898; nor

(e) any land belonging to either of the honourable Societies of the Inner Temple and Middle Temple.

14 & 15 Vict.
c. 95.

Definitions.

20. In this Act, unless the context otherwise requires,—

The expression "open space" (a) means any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder

of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied : Section 20

The expression "common council of the city of London" means the mayor, aldermen, and commons of the city of London in common council assembled :

The expression "owner" (b)—

(a) used in relation to an open space (not being a burial ground), means any person in whom the open space is vested for an estate in possession during his life or for any larger estate ;

(b) used in relation to a house, includes any person entitled to any term of years in the house ;

(c) used in relation to a burial ground, means the person in whom the freehold of the burial ground is vested whether as appurtenant or incident to any benefice or cure of souls or otherwise :

The expression "occupier" (c), used in relation to a house, means the person rated to the relief of the poor (d) in respect of the house :

The expression "burial ground" (e) includes any churchyard, cemetery, or other ground, whether consecrated or not, which has been at any time set apart for the purpose of interment :

The expression "disused burial ground" (f) means any burial ground which is no longer used for interments, whether or not the ground has been partially or wholly closed for burials under the provisions of a statute or Order in Council :

The expression "building" (f) includes any temporary or movable building (g).

(a) This definition differs slightly in wording from that contained in s. 1 of the Metropolitan Open Spaces Act, 1881, as amended by s. 2 of the Open Spaces Act, 1887, and s. 7 of the Open Spaces Act, 1890, but the effect appears to be the same.

(b) This definition is taken from Metropolitan Open Spaces Act, 1881, ss. 1, 2, and 3.

(c) This definition is taken from Metropolitan Open Spaces Act, 1881, ss. 2 and 3.

(d) *I.e.* to the general rate, see s. 69 (2), R. and V. Act, 1925, *ante*, p. 2233.

(e) This definition is taken from Metropolitan Open Spaces Act, 1881, s. 1.

The site of a church where intra-mural burial has taken place was held not to be ground which had been set apart for purposes of interment under the repealed definition (*Re Ecclesiastical Commissioners and New City of London Brewery Co.'s Contract*, [1895] 1 Ch. 702 ; 7 Digest 552, 293). But that definition was held to include ground set apart though never actually used for interments (*Re Ponsford and Newport District School Board*, [1894] 1 Ch. 454 ; 7 Digest 551, 291). See also s. 4 of the Open Spaces Act, 1887, *ante*, p. 4699, and *Re Bosworth and Gravesend Corporation*, cited in the note. Doubt was, however, expressed as to the correctness of those decisions in *Nicholl v. Llantwit Major Parish Council*, [1924] 2 Ch. 214 ; Digest Supp. In that case it was held that land purchased for use as a burial ground but never fenced off, consecrated or used for interments, had never been "set apart for the purpose of interment." *Nicholl v. Llantwit Major Parish Council* was, however, distinguished, and the earlier cases applied in *London C. C. v. Greenwich Corporation*, [1929] 1 Ch. 305 ; 93 J. P. 123 ; Digest Supp.

(f) This definition is identical with that contained in Open Spaces Act, 1887, s. 4, *ante*, p. 4699. See the cases cited in the notes thereto.

(g) Sections 21 and 22 apply to Ireland and Scotland only, and are therefore omitted.

* * * * *

23. *The Acts mentioned in the schedule to this Act are hereby repealed to the Repeal extent specified in the third column of that schedule : (a)*

Provided that—

(a) Nothing in this repeal shall affect the validity or operation of any byelaw made under any enactment so repealed, but all such byelaws shall continue in force as if made under that Act, and may be revoked and altered accordingly ; and

(b) Nothing in this repeal shall affect any order of a county council under any enactment repealed investing a parish council with the powers of the Open Spaces Acts, 1877 to 1890, and every

Section 23.

parish council in respect of which such an order has before the commencement of this Act been made, shall be deemed to be a parish council invested with the powers of this Act by an order of the council of the county within which the parish is situate.

(a) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Commence-
ment of Act.

24. *This Act shall come into operation on the first day of January nineteen hundred and seven (a).*

(a) Words in italics repealed by S. L. R. A., 1927 (*op. cit.*).

Short title.

25. This Act may be cited as the Open Spaces Act, 1906.

Section 23.

SCHEDULE (a).

ENACTMENTS REPEALED.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
40 & 41 Vict. c. 35.	<i>The Metropolitan Open Spaces Act, 1877.</i>	<i>The whole Act.</i>
44 & 45 Vict. c. 34.	<i>The Metropolitan Open Spaces Act, 1881.</i>	<i>The whole Act.</i>
50 & 51 Vict. c. 32.	<i>The Open Spaces Act, 1887</i> .	<i>The whole Act except so much of section four as amends the Disused Burial Grounds Act, 1884.</i>
53 & 54 Vict. c. 15.	<i>The Open Spaces Act, 1890</i> .	<i>The whole Act.</i>
62 & 63 Vict. c. 30.	<i>The Commons Act, 1899</i> .	<i>Section seventeen.</i>

(a) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

THE LOCAL AUTHORITIES (TREASURY POWERS) ACT, 1906.

(6 EDW. 7, c. 33.)

An Act to transfer to the Local Government Board the Powers of the Treasury under enactments relating to Local Authorities.

[4th August 1906.]

Transfer from
Treasury to
Local
Government
Board
of powers
relating to
property and
loans of local
authorities.

1.—(1) The Local Government Board shall exercise as regards every local authority in England, except the London County Council, any power conferred on the Treasury by any enactment contained in, applied by, or incorporated with *the Baths and Washhouses Acts, 1846 to 1899, or (a) the Burial Acts, 1852 to 1900, or any local or private Act (b)*, as respects dealings with property, loans, and matters connected therewith; and all such enactments, and all enactments referring to the powers so conferred, shall be construed accordingly.

(2) Any such power, if exercised before the passing of this Act, whether by the Treasury or by the Local Government Board, shall be deemed to have been duly exercised.

(3) If any question arises as to whether this Act applies to any power conferred by, or referred to in, any enactment, the decision of the Treasury shall be conclusive for all purposes.

Section 1.

(4) Sub-sections (1) and (5) of section eighty-seven of the Local Government Act, 1888 (which relates to local inquiries), shall apply for the purpose of the carrying out by the Local Government Board of any of the powers transferred to them under this Act.

The Treasury was previously the department whose approval was required to the borrowing of money by burial boards; and where the council of a borough or urban district had been constituted a burial board, or had had transferred to them the powers and duties of a burial board, the Treasury had in nearly every case been the department whose approval was required to the borrowing of money by the council for the purposes of the Burial Acts, 1852—1900.

The effect of sub-s. (1) of s. 1 of the present Act is to substitute the L. G. B. (now the Minister of Health) for the Treasury in relation to the matters above referred to.

(a) The words in italics were repealed by the P. H. A., 1936, Sched. III., *ante*, p. 727.

(b) The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, p. 1276.

2. This Act may be cited as the Local Authorities (Treasury Powers) Short title. Act, 1906.

THE PREVENTION OF CORRUPTION ACT, 1906.

(6 EDW. 7, c. 34.)

An Act for the better Prevention of Corruption (a). [4th August 1906.]

1.—(1) If any agent (b) corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

Punishment of corrupt transactions with agents.

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent (b), or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal (c);

he shall be guilty of a misdemeanour, and shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a fine not exceeding five hundred pounds, or to both such imprisonment and such fine, or on summary conviction to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine (d).

Section 1.

(2) For the purposes of this Act the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another (*d*), and the expression "principal" includes an employer.

(3) A person serving under the Crown or under any corporation or any municipal, borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act (*d*).

(a) The Public Bodies Corrupt Practices Act, 1889, *ante*, p. 4796, this Act, and the Prevention of Corruption Act, 1916, *post*, p. 5164, may be cited as the Prevention of Corruption Acts, 1889 to 1916.

(b) A person serving under any public body within the meaning of the Act of 1889 as amended by s. 4 of the Act of 1916, in addition to the bodies mentioned in that Act, is an agent within the meaning of this Act. See the Act of 1916, s. 4 (3), *post*, p. 5165.

A police constable on duty is an agent for the purposes of this Act. See *Graham v. Hart*, [1908] S. C. (J.) 26; 15 Digest 1014, *c*; see also *Secret Commissions and Bribery Prevention League v. Martin* (1913), 48 L. Jo. 183; *R. v. Whitaker*, [1914] 3 K. B. 1283; 79 J. P. 28; 15 Digest 662, 7149.

(c) This paragraph is not limited either by the title of the Act or by the context of the two preceding paragraphs to cases in which the defendant acts corruptly. Neither the corruption nor the attempted corruption of the agent nor his knowledge of the falsity of the statement is a necessary ingredient in the offence created by this paragraph. See *Sage v. Eicholz*, [1919] 2 K. B. 171; 83 J. P. 170; 15 Digest 1014, 11397. The enactment can be used by local authorities where, for example, a tenant makes a false statement (in writing) to a council's official in order to secure a reduction of rent, or a patient in order to avoid paying for hospital treatment. But see s. 2 (1), *infra*.

(*d*) A person convicted on indictment of a misdemeanour under this section shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any government department or any public body or a sub-contract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding seven nor less than three years; but this is not to prevent the infliction in addition to penal servitude of such punishment as under the Acts of 1889 or 1906 may be inflicted in addition to imprisonment, or to prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the said Acts. See the Act of 1916, s. 1, *post*, p. 5164.

Where in proceedings under the Act of 1889 or this Act it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any government department or a public body by or from a person, or agent of a person holding or seeking to obtain a contract from His Majesty or any government department or public body, the money, gift, or consideration shall be deemed to have been paid or given or received corruptly or as such inducement or reward as is mentioned in such Acts unless the contrary is proved. See the Act of 1916, s. 2, *post*, p. 5165. With regard to the time within which summary proceedings may be commenced, see the Act of 1916, s. 3, *post*, p. 5165.

(e) See note (*b*), *supra*.

Prosecution of offences.

2.—(1) A prosecution for an offence under this Act shall not be instituted without the consent, in England of the Attorney-General or Solicitor-General, and in Ireland of the Attorney-General or Solicitor-General for Ireland.

(2) [Repealed by the Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 10, Sched. III.; 26 Halsbury's Statutes 83, 84.]

(3) Every information for any offence under this Act shall be upon oath.

(4) The expenses of any prosecution on indictment under this Act shall be defrayed as in cases of indictment for felony. Section 2.

(5) A court of quarter sessions shall not have jurisdiction to inquire of, hear, and determine prosecutions on indictments for offences under this Act.

(6) Any person aggrieved by a summary conviction under this Act may appeal to a court of quarter sessions.

3. [Scotland.]

4.—(1) This Act may be cited as the Prevention of Corruption Act, 1906. Short title and commencement.

(2) *This Act shall come into operation on the first day of January nineteen hundred and seven (a).*

(a) Repealed by the S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

BURIAL ACT, 1906.

(6 Edw. 7, c. 44) (a).

An Act to amend the Law with respect to the consents required for the use of ground for Burials and the construction of Cemeteries.

[21st December, 1906.]

1. The consent of the owner, lessee, and occupier of a dwelling-house to the use for burials of any ground used or appropriated for a burial ground or cemetery, mentioned in section nine of the Burial Act, 1855, shall not be and shall be deemed never to have been required in any case where the dwelling-house is or was begun to be erected or is or was erected or completed after any part of that ground has or had been so used or appropriated : Consents under 18 & 19 Vict. c. 128, s. 9.

Provided (b) that nothing in this section shall affect any rights acquired before the twenty-seventh day of November one thousand nine hundred and six under any judgment or order of a court of competent jurisdiction or under any agreement in writing, but if a dispute, one of the parties to which is a burial authority within the meaning of the Burial Act, 1900 (c), arises under such an agreement as to any such right, the dispute shall, if either party so requires, be determined by the Local Government Board (d) either as arbitrators or otherwise at the option of the Board, in like manner as if it were a difference which the Board are authorised to determine under the Local Government Act, 1888, and section sixty-three and sub-sections (1) and (5) of section eighty-seven of that Act (e), as amended by any subsequent enactment (f), shall apply accordingly. 63 & 64 Vict. c. 15.
51 & 52 Vict. c. 41.

(a) This Act was passed in consequence of the decision in *Godden v. Hythe Burial Board* [1906] 2 Ch. 270 ; 70 J. P. 285 ; 7 Digest 549, 275, to the effect that s. 9 of the Burial Act, 1855 (2 Halsbury's Statutes 221), prevented burials in a burial ground laid out since 1859 within 100 yards of a dwelling-house erected after the burial ground had been laid out without the consent of the owner, lessee, and occupier of such dwelling-house. A somewhat similar provision is contained in s. 10 of the Cemeteries Clauses Act, 1847, *ante*, p. 4213, with regard to cemeteries under that Act, and in s. 5 of the Cremation Act, 1902, *ante*, p. 4999, with regard to a crematorium.

(b) This proviso secured the rights of the plaintiff in *Godden v. Hythe Burial Board*, *supra*, under the judgment as well as similar rights acquired by agreement.

(c) See s. 11 of this Act, *ante*, p. 4994.

(d) Now M. of H. (see Ministry of Health Act, 1919, *post*, p. 5189).

(e) See these enactments, *post*.

(f) See the Local Government (Determination of Differences) Act, 1896, *ante*, p. 4938.

2. In section ten of the Cemeteries Clauses Act, 1847 (a), as incorporated with the Public Health (Interments) Act, 1879, "one hundred yards" shall Consents under 10 & 11 Vict. c. 65.

Section 2. be substituted for "two hundred yards" as the distance from a dwelling-house within which no part of a cemetery may be constructed without the consent of the owner, lessee, and occupier of the house.

(a) *Ante*, p. 4213, and compare s. 5 of the Cremation Act, 1902, *ante*, p. 4299.

Short title.

3. This Act may be cited as the Burial Act, 1906, and may be cited with the Burial Acts, 1852 to 1900, as the Burial Acts, 1852 to 1906.

THE REMOVAL OF OFFENSIVE MATTER ACT, 1906.

(6 Edw. 7, c. 45.)

An Act to repeal the provisions of the Metropolitan Police Act, 1839, with respect to the removal of Offensive Matter in places within the Metropolitan Police District. [21st December 1906.]

This Act was repealed by the S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Repeal of
2 & 3 Vict.
c. 47, s. 60,
as to
offensive
matter.

1. Paragraph (4) of section sixty of the Metropolitan Police Act, 1839 (which paragraph relates to the emptying of privies and the removal of offensive matter), is hereby repealed.

Paragraph (4) of s. 60 of the Act of 1839 was as follows: "Every person who shall empty or begin to empty any privy between the hours of six in the morning and twelve at night, or remove along any thoroughfare any night soil, soap lees, ammoniacal liquor, or other such offensive matter, between the hours of six in the morning and eight in the evening, or who shall at any time use for any such purpose any cart or carriage not having a proper covering, or who shall wilfully or carelessly slop or spill any such offensive matter in the removal thereof, or who shall not carefully sweep and clean every place in which any such offensive matter shall have been placed, slopped or spilled; and in default of the apprehension of the actual offender, the owner of the cart or carriage employed for any such purpose shall be deemed to be the offender: Provided always, that this enactment shall not be construed to prevent the commissioners of sewers within the metropolitan police district, or any person acting in their service or by their direction, from emptying or removing along any thoroughfare at any time the contents of any sewer which they are authorised to cleanse or empty."

So far as regards the county of London this paragraph was repealed by the P. H. (London) A., 1891 (11 Halsbury's Statutes 1025), but it continued in force in the area of the police district outside that county until the passing of the present Act. It was generally considered that it prevented byelaws as to the same subject-matter being made under the P. H. A., 1875, s. 44, or the P. H. A., 1890, s. 26 (1) (13 Halsbury's Statutes 644, 835) (if in force), by urban and rural councils within the limits of the metropolitan police district; and consequently there were but few areas within that district where such byelaws had been made.

In the case of any district adjoining the county of London now proposing byelaws for regulating the removal of offensive matters under s. 82 of the P. H. A., 1936, *ante*, p. 270, due regard will doubtless be had to the byelaw on the same subject made by the L. C. C. Under the byelaw removal during hours of darkness, which was permissible under the Police Act, is virtually prohibited, and difficulty had arisen in the past where removals had taken place from London into the surrounding districts from the conflict of the hours of removal fixed by the Act and the byelaw respectively. The L. G. B. for many years refused, and the M. of H. is not prepared, to confirm any byelaw which prescribes hours of darkness as times for removal, because proper supervision is then hardly feasible, and the offences sought to be prevented by the byelaw are the more likely to arise.

Reference should also be made to the London Traffic Act, 1924, Sch. III. (9), Vol. V., *post*, and the London Traffic (Miscellaneous Provisions) Consolidation Regulations, 1934, made thereunder.

Short title.

2. This Act may be cited as the Removal of Offensive Matter Act, 1906.

FINANCE ACT, 1907.

Section 10.

(7 EDW. 7, c. 13) (a).

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the financial arrangements of the year. [9th August, 1907.]

(a) Part of this Act is here inserted in consequence of the effect of s. 10 as regards the reduction of duty on loan capital issued by local authorities.

* * * * *

PART II.

STAMPS.

10.—(1) Where it is shown to the satisfaction of the Commissioners that the loan capital issued (a) by any local authority, corporation, company, or body of persons, in respect of which a statement has, after the commencement of this Act, been delivered to the Commissioners under section eight of the Finance Act, 1899 (b), has been wholly or partly applied for the purpose of the conversion or consolidation of then existing loan capital, that authority, corporation, company, or body of persons, as the case may be, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of two shillings for every hundred pounds of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued.

Reduction of duty on loan capital issued for the purpose of the conversion or consolidation of existing capital. 62 & 63 Vict. c. 9.

(2) If it is represented to the Commissioners by any such local authority, corporation, company, or body of persons that loan capital about to be issued by them is to be applied, in whole or in part, for the purpose of the conversion or consolidation of existing loan capital, the Commissioners may postpone the time for the delivery of the statement and the payment of duty under section eight of the Finance Act, 1899 (b), until the capital has been issued or until such other time as the Commissioners think fit for the purpose of enabling the payment and repayment of the duty to take place as one transaction.

(a) Loan capital may be issued by local authorities under s. 204 of the L. G. A., 1933, *anie*, p. 1038.

(b) See this section set out (16 Halsbury's Statutes 711); see also s. 29 of the Finance Act, 1934 (27 Halsbury's Statutes 496), for amendment of this section as to stamp duty on loan capital.

* * * * *

PART VII.

GENERAL.

* * * * *

30.—(2). . . .

Part II. of this Act shall be construed together with the Stamp Act, 54 & 55 Vict. 1891. c. 39.

(3) This Act may be cited as the Finance Act, 1907.

* * * * *

Section 1.

ADVERTISEMENTS REGULATION ACT, 1907.

(7 EDW. 7, c. 27.)

An Act to authorise Local Authorities to make Byelaws respecting the Exhibition of Advertisements. [28th August 1907.]

Advertising stations are rateable under the Advertising Stations Rating Act, 1889 (14 Halsbury's Statutes 597), and local authorities have extensive powers as to requiring hoardings to be set up. (See s. 34 of the P. H. A. A. A., 1890, *ante*, p. 4811, s. 80 of the Towns Improvement Clauses Act, 1847, *ante*, p. 4209, and s. 32 of the P. H. A. A. A., 1907, *post*, p. 5052.)

This Act, however, is directed to a different purpose, and gives power to make byelaws for preventing the disfigurement of places by advertisements, and this power has been extended by the Advertisements Regulation Act, 1925, Vol. V., *post*, and the Ancient Monuments Act, 1931, s. 7, Vol. V. and 24 Halsbury's Statutes 301.

Such byelaws were not subject to the provisions of ss. 182—188 of the P. H. A., 1875, *ante*, pp. 4467—8, or s. 23 of the M. C. Act, 1882, or s. 16 of the L. G. A., 1888, and therefore do not fall within Pt. XII. of the L. G. A., 1933, *ante*, p. 1093 (see *ibid.*, s. 250 (1), *ante*, p. 1104). They require confirmation by a Secretary of State in virtue of s. 3, *post*, p. 5033, which contains its own provisions for publication, etc., parallel to those of s. 250 of the Act of 1933. Reference may also be made to the provisions of the Petroleum (Consolidation) Act, 1928, s. 11, Vol. V. and 13 Halsbury's Statutes 1176, which enable control to be exercised over the appearance of petrol filling stations.

Short title.

1. This Act may be cited as the Advertisements Regulation Act, 1907.

Local authorities to have power to make byelaws for regulation of advertisements.

2. Any local authority (a) may make byelaws (b)—

- (1) For the regulation and control of hoardings and similar structures (c) used for the purpose of advertising when they exceed twelve feet in height (d);
- (2) For regulating, restricting, or preventing the exhibition of advertisements (e) in such places and in such manner, or by such means, as to affect injuriously the amenities of a public park (f) or pleasure promenade, or to disfigure the natural beauty of a landscape (g):

Provided that a local authority in making byelaws under this section shall provide for the exemption from the operation of such byelaws of any hoardings and similar structures in use for advertising purposes at the time of the making of the byelaws, and of any advertisement (e) exhibited at that time, for such period, not being less than five years from that time, as they may think fit (h).

In addition to the purposes mentioned in this section byelaws may also be made under the section prohibiting or restricting the display of advertisements or notices of such a nature or in such a manner as to be detrimental to the amenities of any ancient monument (Ancient Monuments Consolidation and Amendment Act, 1913, s. 19 (12 Halsbury's Statutes 400)), and for regulating, restricting or preventing the exhibition of advertisements so as to disfigure or injuriously affect (a) the view of rural scenery from a highway or railway or from any public place or water; or (b) the amenities of any village within the district of a rural district council; or (c) the amenities of any historic or public building or monument or of any place frequented by the public solely or chiefly on account of its beauty or historic interest (s. 1 (1) of the Act of 1925, Vol. V., *post*). See sub-s. (3), *ibid.*, as to the exclusion of railway property and in an urban district of docks, etc. Model byelaws have been prepared in the Home Office, see Home Office Letter d/18 12/27 in 90 J. P. N. 24.

(a) As to the meaning of local authority in this Act, see s. 7, *post*, p. 5034. By s. 2 of the 1925 Act, Vol. V., *post*, a county council may delegate the power to make byelaws to any urban district council in the county. The power of delegation to rural district councils conferred by that section is restricted to the enforcing of any byelaws made by the county council.

(b) As to the confirmation of these byelaws, see s. 3, *infra*.

(c) A gable end of a building 25 feet high is not a hoarding or similar structure within the meaning of this section (*Gloucester Billposting Co., Ltd. v. Hopkins* (1932), 96 J. P. 462; Digest Supp.). Nor are panels which do not themselves exceed 12 feet in height though affixed to a wall at more than 12 feet above ground level (*Royce v. Orme* (1932), 96 J. P. 468; Digest Supp.). But an advertisement divided into panels may contravene the section though no individual panel exceeds 12 feet in height (*Horlicks, Ltd. v. Garvie*,

[1939] 1 All E. R. 335; Digest Supp.). An advertisement hoarding may be a "building" (*Super Sites, Ltd. v. Keen*, [1938] 2 All E. R. 471; Digest Supp.).

(d) These words mean the measurement of the hoarding itself and not the height at which it is above ground level (*Royle v. Orme* (1932), 96 J. P. 468; Digest Supp.).

(e) "Advertisements" includes any structure or apparatus erected or intended only for the display of advertisements (s. 1 (2) of the 1925 Act, Vol. V., *post*).

(f) A byelaw that advertisements shall not be exhibited within 50 yards of specified public parks so as to be visible from them, unless such advertisements relate to the trade or business carried on upon the premises, is *intra vires* the local authority under this section, although it does not contain any provision requiring that the amenities of the neighbourhood have to be injuriously affected in order to constitute an offence (*Twickenham Corporation v. Solosigns, Ltd.*, [1939] 3 All E. R. 246; 103 J. P. 263; Digest Supp.).

(g) In byelaws under this head a local authority need not define "the natural beauty of a landscape" or schedule specific beauty spots. A byelaw which prohibited the erection of advertisements in any part of a county other than within boroughs and larger urban districts "so as to be visible from any public highway . . . or waterway or . . . railway and to disfigure the natural beauty of the landscape" was held to be *intra vires* this section (*United Billposting Co., Ltd. v. Somerset C. C.* (1926), 90 J. P. 132; 24 L. G. R. 383; 38 Digest 178, 204; *Scrimgeour v. Stoke-on-Trent and North Staffordshire Billposting Co., Ltd.* (1936), 80 Sol. Jo. 324).

(h) It is valid under this proviso to make an exemption under byelaws made sixteen years after previous byelaws on the same subject, if the latter byelaws contain qualifying words to the effect that the exemption is not to extend to any hoarding, etc., to which the earlier byelaw applied; because hoardings to which the earlier byelaw applied have already enjoyed the statutory period of exemption and are not entitled to a second period, whilst any others are not prejudiced by the exception (*Gloucester Billposting Co., Ltd. v. Hopkins* (1932), 96 J. P. 462; Digest Supp.).

3.—(1) A byelaw made under this Act shall not have any effect until confirmed by the Secretary of State, and shall not be so confirmed until at least thirty days after the local authority (a) have published it in such manner as the Secretary of State may by general or special order direct.

Byelaws to be confirmed by Secretary of State.

(2) The Secretary of State shall, before confirming any byelaw, consider any objections to it which may be addressed to him by persons affected or likely to be affected thereby.

(3) The Secretary of State may, before confirming any byelaw, order that a local inquiry be held with respect to the byelaw or with respect to any objections thereto. The person holding any such inquiry shall receive such remuneration as the Secretary of State may determine, and that remuneration and the expenses of the local inquiry shall be paid by the local authority making the byelaw (b).

(4) Byelaws made under this Act may apply either to the whole of the area of the local authority (a), or to any specified part thereof.

(5) Byelaws made by a county council shall not be of any force or effect within any borough or urban district the council of which is a local authority (a) under this Act:

(6) . . . (c).

(a) As to who are local authorities under the Act, see s. 7, *post*, p. 5034, and s. 2 of the 1925 Act, Vol. V., *post*, referred to in the notes to s. 7.

(b) As to the expenses of a local authority as defined by s. 7, see s. 4, *infra*. The expenses of a district council to whom powers have been delegated under s. 2 of the 1925 Act, Vol. V., *post*, are provided for in sub-s. (4), *ibid.*, see note to s. 4, *infra*.

(c) Repealed by the L. G. A., 1933, *ante*.

4. Any expenses incurred by a local authority (a) in England or Ireland in carrying into effect the provisions of this Act or any byelaw made thereunder shall be defrayed in the case of a county out of the county fund, in the case of the city of London out of the consolidated rate of that city, in the case of a borough out of the borough fund or borough rate, and in the case of an urban district as part of the general expenses incurred in the execution of the Public Health Acts (b): Provided that a county council shall not raise any sum on account of their expenses under this Act within any borough or urban district the council of which is a local authority (a) under his Act.

Expenses.

**Note to
Section 4.**

(a) This section relates only to those local authorities defined by s. 7, *infra*. Where a county council has delegated powers to a district council under s. 2 of the 1925 Act, Vol. V., *post*, that section contemplates that the terms upon which a district council will accept delegated powers and duties under the Act will include a contribution by the county council to the expenses incurred by the district council in consequence of such delegation (sub-s. (4), *ibid.*). Any expenditure by the district council in excess of the agreed contribution is to be defrayed as part of the general expenses of the district council. Acceptance of delegated powers and duties by a district council under s. 2 of the 1925 Act will not constitute the district council a local authority for the purposes of this section (*ibid.*).

(b) The words in italics were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1276.

Powers of Act
to be in addi-
tion to any
existing powers.

5. The powers and provisions of this Act shall be deemed to be in addition to and not in derogation of any powers and provisions of any local Act, and any powers of making byelaws under any general Act and any such powers and provisions may be exercised and enforced in the same manner as if this Act had not been passed.

Cf. s. 341 of the P. H. A., 1875, *ante*, p. 4522. It would seem that a person could not be punished twice for the same offence both under a local Act and under a byelaw under this Act.

6. [*Application to Scotland.*]

Definition.

7. For the purposes of this Act the expression "local authority" means—

- (1) Within the city of London, the mayor, aldermen and commons of that city, in common council assembled :
- (2) Within any municipal borough in England, the council of that borough :
- (3) Within any royal, parliamentary, or police burgh in Scotland, the town council :
- (4) Within any urban district in England containing a population according to the last census for the time being of over ten thousand, and within any urban district in Ireland containing a population according to the last census for the time being of over five thousand, the council of that district :
- (5) Elsewhere in England, Scotland, or Ireland, the county council.

Under s. 2 of the 1925 Act county councils are empowered by arrangement to delegate their powers under this Act as amended by the 1925 Act to any urban district council within the county. Delegation may also be arranged with any rural district council, but only for the enforcement within their district of any byelaws made by the county council. As to the terms which may be included in such arrangements, see the section at Vol. V., *post*. Any arrangements may be cancelled by the county council at any time, but any byelaws made by the district council under the arrangement will continue in force until revoked or varied by the county council as if they had been made by the county council.

Enforcement of
byelaws of
London County
Council.

8. It shall be the duty of the metropolitan borough council to enforce within its own area any byelaws made by the London County Council under paragraph (1) of section two of this Act.

9. [*Application to Ireland.*]

Penalties.

10. If any person acts in contravention of or fails to comply with any byelaw made under this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds, and to a penalty not exceeding twenty shillings for every day during which the offence is continued after his conviction thereof.

Apparently any member of the public may prosecute. (See *R. v. Stewart*, [1896] 1 Q. B. 300; 60 J. P. 356; *Kenealy v. O'Keeffe*, [1901] 2 I. R. 39; 25 Digest 122 m; *Connor v. Butler*, [1902] 2 I. R. 569; Digest Supp.; *Allman v. Hardcastle* (1903), 67 J. P. 440; 89 L. T. 553; 26 Digest 424, 1435.)

No right of appeal is expressly given, but see now the general right of appeal given by s. 37 of the Criminal Justice Administration Act, 1914 (11 Halsbury's Statutes 386)

And there may be an appeal by case stated under s. 2 of the S. J. A., 1857 (11 Halsbury's Statutes 300), and s. 33 of the S. J. A., 1879 (*op. cit.* 341).

Penalties must be dealt with as unappropriated penalties under s. 31 of the S. J. A., 1848 (*op. cit.* 289), and s. 11 of the Criminal Justice Administration Act, 1851 (4 Halsbury's Statutes 526). Receipts for penalties are exempt from stamp duty. See the Revenue Act, 1898, s. 8 (16 Halsbury's Statutes 706).

**Note to
Section 10.**

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1907 (a).

(7 EDW. 7, c. 53.)

An Act to amend the Public Health Acts.

[28th August 1907.]

PART I (b).

GENERAL.

1. This Act is divided into Parts as follows :

Part I.—General.

II.—Streets and buildings.

III.—*Sanitary provisions (c).*

IV.—*Infectious diseases (d).*

V.—*Common lodging-houses (c).*

VI.—Recreation grounds.

VII.—Police.

VIII.—*Fire brigade.*

IX.—Sky signs.

X.—Miscellaneous.

Division
of Act into
Parts.

Parts III., IV., V. and VIII. have now been repealed, and considerable portions also of the other parts. Parts III. and V. were repealed by the P. H. A., 1936, *ante*, p. 1; Part IV. by that Act and the Food and Drugs Act, 1938, *ante*, p. 1301; and Part VIII. by the Fire Brigades Act, 1938 (31 Halsbury's Statutes 585). The Act is printed so far as unrepealed.

(a) The object of this Act was to enable an authority to obtain certain additional powers without having to incur the expense of promoting a local Act. Its sections were founded upon provisions which had been allowed by Parliament in various local Acts. Object and
scope of Act.

A town council or urban or rural district council desirous of exercising any of the powers conferred by the Act must apply to the Minister of Health (or in the case of powers relating to police or sky signs (Parts VII. and IX. of the Act), to the Home Secretary), for an Order declaring the part or section containing the desired powers to be in force in their borough or district.

Certain of the sections are now, however, applied to all rural districts by the L. G. A., 1929, Vol. V., *post*, and 10 Halsbury's Statutes 883, and where this is the case the fact is noted under the section.

Where a rural council obtain an Order, the Order will extend to such of the contributory places in the district as are specified in it (s. 3 (1), *post*, p. 5037).

The Order may specify conditions subject to which any part of any section of the Act shall be in force in an urban district or contributory place, and where, in the opinion of the Minister of Health (or Home Secretary), the circumstances so require, any such Order may, in relation to that district or contributory place, declare any part or section of the Act to be in force subject to such necessary adaptations as are specified in it (s. 3 (3), (4), *post*, p. 5038). Any enactments in any "local Act" which appear to the Ministry of Health (or Home Secretary) to contain provisions similar to or inconsistent with the provisions extended to the district by the Order

**Note to
Section 1.**

may be declared to be no longer in force in the district or contributory place to which the Order relates (s. 3 (1)). An enactment in a local Act may therefore be repealed by an Order of the Minister of Health (or Home Secretary).

The Act does not contain a definition of the term "local Act" extending it to a Provisional Order (see, *e.g.*, the definition in the London Government Act, 1899, s. 34 (11 Halsbury's Statutes 1241)), and it is a question whether a Provisional Order, or an Act confirming such an Order, could be repealed by an Order under the Act, more especially where the confirming Act is deemed to be a public general Act. For instance, the P. H. A., 1875, s. 297 (8), *ante*, p. 4508, provides that every Act confirming a Provisional Order of the L. G. B. under that Act shall be deemed to be a public general Act, and sub-s. (5) of the section provides for the repeal of the Act confirming any such Order by a further Provisional Order.

All powers given to an authority under the Act are to be deemed to be in addition to, and not in derogation of, any other powers conferred upon such authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if the Act had not been passed (s. 11, *post*, p. 1108), and nothing in the Act is to exempt any person from any penalty to which he would have been liable if the Act had not been passed; but no person is to be liable, except in the case of a daily penalty, to more than one penalty in respect of the same offence (*ibid.*).

(b) Except as regards Part I. the Act is only operative to the extent to which particular parts or sections may have been applied to a district by an Order of the Minister of Health or Home Secretary as the case may be. See ss. 2 (2), 3, and 13, *post*, pp. 5037, 5041, and see note (a), *supra*.

(c) The reference to Part III. (Sanitary Provisions) and Part V. (Common Lodging-houses) were repealed by the P. H. A., 1936, Sched. III., Pt. III, *ante*, p. 729.

(d) The reference to Part IV. has been repealed by the Food and Drugs Act, 1938, Sched. IV, *ante*, p. 1455.

Short title,
construction
and extent
of Act.

2.—(1) This Act shall be construed as one with the Public Health Acts.

As to the effect of the provision that the Act shall be "construed as one with" the Public Health Acts, see the note under s. 1 of the Private Street Works Act, 1892, *ante*, p. 918. See also the express provisions of s. 13, *post*, p. 5041.

(2) Part I. of this Act shall extend to England and Wales and Ireland exclusive of the administrative county of London, and all or any of the remaining Parts or all or any of the sections thereof shall extend to any district to which all or any of those Parts or sections are applied by an Order (a) of the Local Government Board or of the Secretary of State as the case may be.

(a) See hereon, s. 3, *infra*. For the L. G. B. must now be read the Minister of Health.

(3) This Act may be cited as the Public Health Acts Amendment Act, 1907, and this Act and the Public Health Acts may together be cited as the Public Health Acts, 1875 to 1907.

(4) Any byelaws made under any enactment for which any provisions of this Act are substituted shall remain in force as if the byelaws had been made under the corresponding provisions of this Act.

But for this provision the byelaws might have been held to be abrogated. See *Watson v. Winch*, [1916] 1 K. B. 688; 80 J. P. 149; 42 Digest 773, 2015.

(5) *This Act shall come into operation on the first day of January one thousand nine hundred and eight.*

Repealed S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

3.—(1) The Local Government Board may, on the application of a local authority (a), by Order to be published in such manner as the Local Government Board direct, declare any Part or any section of this Act to be in force in the district of the local authority, or, where the local authority are a rural district council, in any contributory place within the district of the local authority, and may declare any enactments in any local Act, which appear to the Local Government Board to contain provisions similar to or inconsistent with any such Part or section, to be no longer in force in that district or contributory place (b).

Section 3.

Application
of Parts or
section of
Act.

For the L. G. B. must now be read the Minister of Health.

(a) See the definition in s. 13, *post*, p. 5041.

(b) See hereon note (a) under s. 1, *ante*, p. 5035.

(2) The local authority shall, two weeks at least before applying for an Order, give notice of their intention to make such application by advertising the same once at least in one or more of the newspapers circulating in their district in each of two successive weeks, and no order shall be made under this section until proof of such advertisement has been given to the satisfaction of the Local Government Board, and until at least one month has elapsed after the date of such advertisement.

With reference to applications under this section, the L. G. B. in a letter dated December 23rd, 1907, said:

Practice of
the L. G. B.
in regards to
application.

"In considering whether application should be made to have any Part or section of the Act put in force, the local authority should have regard to the circumstances and needs of the locality. They should cause any local Act in force in their district to be carefully examined in order to ascertain whether it contains any provision bearing on the subject-matter of any Part or section of the present Act which they desire to have put in force.

"The Board will be ready to give attention to applications under the Act, but they think that such applications should not be made unless the local authority are satisfied that the powers sought are really needed.

"It is necessary that the local authority should, two weeks at least before applying to the Board for an Order, give notice of their intention to make the application by advertising the same once at least in one or more of the newspapers circulating in their district in each of two successive weeks, and no Order is to be made until proof of the advertisement has been given to the satisfaction of the Board, and until at least one month has elapsed after the date of such advertisement (s. 3 (2)).

"The application, which should not be made until after the expiration of two weeks from the date of the second week's advertisement, should be by resolution of the local authority asking the Board to put in force any specified Part or section of the Act which the local authority desire to have applied to their district, and in the case of a rural district council should state whether the application relates to the whole district, or to specified contributory places in it. A copy of the resolution, certified by the clerk, should be forwarded to the Board, and at the same time they should be furnished with a statutory declaration to be made by the clerk, verifying the fact of the issue of the necessary advertisements, and having copies of the newspapers in which the advertisements were published annexed to it as exhibits.

"The Board think that it will be found convenient if before a local authority publish any advertisement or make any formal application for an Order under s. 3 they forward to the Board drafts of the proposed advertisement and resolution. These should be accompanied by a statement setting out as regards each Part or each section of the Act to which the proposal relates the grounds upon which it is made. A list of any local Acts in force in the district and of any Provisional Orders altering such Acts should also be supplied, and if any of them contain provisions bearing on the subject-matter of any Part or section included in the proposed application, a copy of the local Act or Order should be forwarded, and a reference should

**Note to
Section 3.**
—

be given to the provisions in it which are in question. If there is no local Act in force, this should be stated. This procedure will enable the Board to consider the proposal before any advertisement is issued, and, if necessary, to make suggestions for its amendment."

The L. G. B. have been succeeded by the M. of H. but the above instructions still apply.

(3) Any such Order may specify conditions subject to which any Part or any section of this Act shall be in force in the district or contributory place, and where, in the opinion of the Local Government Board, the circumstances so require, any such Order may, in relation to that district or contributory place, declare any Part or any section of this Act to be in force subject to such necessary adaptations as are specified in the Order.

A statement of the effect of each Order specifying conditions or adaptations as aforesaid shall be published in the London Gazette as well as in any other manner directed by the Local Government Board.

(4) In regard to Part VII. (Police), Part VIII. (Fire Brigade), and Part IX. (Sky Signs) of this Act, the Secretary of State shall be deemed to be substituted in this section for the Local Government Board.

4. [*Repealed by the L. G. A., 1933, ante, p. 735.*]

**Inquiries
by Local
Government
Board.**

5.—(1) The Local Government Board may direct any inquiries to be held by their inspectors which they may deem necessary in regard to the exercise of any powers conferred upon them under this Act. . . .

The concluding words of this sub-section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1276. As to inquiries, see now *ibid.*, s. 290, *ante*, p. 1170.

(2) [*Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., ante, pp. 1194, 1276.*]

(3) The Secretary of State may order that a local inquiry be held in regard to the exercise of any powers conferred on him under this Act. . . .

The concluding words of this sub-section were repealed by the L. G. A., 1933 s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1276.

Ordinarily neither the Minister of Health nor the Secretary of State directs a local inquiry before deciding upon an application for powers under this Act. See, however, notes to s. 31, *post*, p. 5051.

**Legal
proceedings.**

6. Offences under this Act or under any byelaw (a) made under the powers of this Act or under the powers of the Public Health Act, 1875, or any enactment amending or extending that Act, may be prosecuted, and penalties, forfeitures, costs, and expenses recovered, in like manner and subject to the same provisions as offences which may be prosecuted, and penalties, forfeitures, costs, and expenses which may be recovered, in a summary manner under the Public Health Acts (b).

(a) Doubt has at times been expressed whether a penalty under a byelaw is a penalty "under" the Act, which gave power to make the byelaw. See note (a), p. 1113, *ante*, where it is submitted that it is. S. 6 removes this doubt in cases within its terms.

(b) See the following sections of the P. H. A., 1875, relating to the matters here mentioned: s. 251, *ante*, p. 4481 (see also the notes under the repealed s. 252); ss. 253—254, *ante*, pp. 4482—4; ss. 257—258, *ante*, pp. 4489—91; and s. 262, *ante*, p. 4492.

**Note to
Section 6.**
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7.—(1) Except where this Act otherwise expressly provides (a) any person aggrieved—

- (a) By any order, judgment, determination, or requirement of a local authority under this Act;
 - (b) By the withholding of any order, certificate, licence, consent, or approval, which may be made, granted, or given by a local authority under this Act;
 - (c) By any conviction or order of a court of summary jurisdiction under any provision of this Act;
- may appeal, in manner provided by the Summary Jurisdiction Acts (b), to a court of quarter sessions.

Appeals to
quarter
sessions, etc.

A similar enactment is to be found in s. 7 of the P. H. A. A. A., 1890, *ante*, p. 4804. See that section and the cases cited in the notes thereto, *ante*, p. 4804.

It is arguable that an appeal will lie to quarter sessions against the requirement of a local authority under the P. H. A., 1875 (*e.g.* under s. 150, *ante*, p. 4388), since that Act is to be construed as one with the P. H. Acts (s. 2 (1), *ante*, p. 5036) (*R. v. Essex J.J., Ex parte Barking U. D. C.*, [1916] 2 K. B. 406; 80 J. P. 345; *Hart v. Hudson Bros., Ltd.*, [1928] 2 K. B. 629; 92 J. P. 170, and *per Lord Hanworth, M.R.*, in *Cardiff Corporation v. Cardiff Pure Ice and Cold Storage Co., Ltd.* (1930), 95 J. P. at p. 14). See also the note to the next sub-section.

The fact that an owner has not appealed under this section does not preclude him from raising a question which might have been the subject of such an appeal in proceedings by the local authority before justices to recover expenses incurred in executing works upon the default of the owner (*Shoeburyness U. D. C. v. Burges* (1924), 22 L. G. R. 684; 46 M. C. C. 211; 38 Digest 154, 40).

The cases in which an appeal will lie under this provision are indicated in the notes to the several sections.

(a) Ss. 42, 48 (13 Halsbury's Statutes 927, 929) formerly made express provision otherwise. Both sections are now repealed.

(b) The provisions of the Summary Jurisdiction Acts relating to appeals will be found in the notes to s. 301 of the P. H. A., 1936, *ante*, p. 87.

(2) Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority, under this Act, are empowered to recover in a summary manner any expenses incurred by them, or to declare the expenses to be private improvement expenses, section two hundred and sixty-eight of the Public Health Act, 1875 (a), shall apply as it applies to cases under that Act, and sub-section (1) of this section shall not apply in any such case, whether arising under the Public Health Act, 1875, or under this Act; but nothing in this sub-section shall extend to any case in which an appeal to a court of summary jurisdiction in relation to any requirement of a local authority, or to any such expenses, is expressly authorised by this Act (b).

See the very similar provision in the P. H. A. A. A., 1890, s. 7 (2), *ante*, p. 4805. The same difficulties appear to arise in construing this sub-section, and also the further difficulty of attaching an intelligible meaning to the words "whether arising under the P. H. A., 1875, *ante*, p. 4331, or under this Act," unless the submission made in the note under sub-s. (1) is correct. In *R. v. Recorder of Belfast*, [1919] 2 I. R. 171, it was held that the word "decision" in this sub-section must bear the same interpretation as in s. 268 of the P. H. A., 1875, *ante*, p. 4495, and that until

**Note to
Section 7.**

there is such a "decision" the right of appeal against an order, etc., of the local authority under sub-s. (1) is not excluded by the possibility that there may subsequently be a "decision" in respect of which an appeal will lie only to the Minister under s. 268.

(a) See this section and the notes thereunder, *ante*, p. 4495.

(b) S. 42 (13 Halsbury's Statutes 927) and s. 48 (*op. cit.* 929), expressly authorise appeals to a court of summary jurisdiction.

More than
one sum in
one summons.

8. Any information, complaint, warrant or summons made or issued for the purpose of this Act or of the Public Health Acts may contain in the body thereof or in a Schedule thereto several sums.

This section is identical in terms with s. 8 of the P. H. A. A., 1890. See the note under that section at *ante*, p. 4805.

Byelaws.

9. All the provisions with respect to byelaws contained in sections one hundred and eighty-two to one hundred and eighty-six of the Public Health Act, 1875 (*a*), and any enactment amended or extended by those sections shall apply to all byelaws from time to time made by a local authority under the provisions of this Act, provided that the Secretary of State shall be the confirming authority for byelaws made under Part VII. (Police) of this Act.

(a) Ss. 182, 185 and 186 of the P. H. A., 1875 (13 Halsbury's Statutes 704, 706), have been wholly repealed, and ss. 183, 184, *ante*, pp. 4467—8, partly repealed, by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273, and the last two mentioned sections were repealed, except so far as they might be material for the purposes of any unrepealed enactment in the Act of 1875, *ante*, p. 4331, or any Act directed to be construed therewith, by the P. H. A., 1936, *ante*, p. 1. So far as still unrepealed the sections are set out at *ante*, pp. 4467—8. See also s. 250, L. G. A., 1933, *ante*, p. 1104.

Compensation,
how
determined.

10. Where any compensation, costs, damages, or expenses is or are by this Act directed to be paid, and the method for determining the amount thereof is not otherwise provided for, such amount shall in case of dispute be ascertained in the manner provided by the Public Health Acts.

See the P. H. A., 1875, ss. 179—181, and notes thereunder, *ante*, pp. 4461—7; and see also *ibid.*, s. 308, and notes thereunder, *ante*, p. 4515.

Powers of
Act cumulative.

11. All powers given to a local authority under this Act shall be deemed to be in addition to and not in derogation of any other powers conferred upon such local authority by any Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not been passed (*a*).

Nothing in this Act shall exempt any person from any penalty to which he would have been liable if this Act had not been passed, but no person shall be liable, except in the case of a daily penalty (*b*), to more than one penalty in respect of the same offence.

(a) See the P. H. A., 1875, s. 341, *ante*, p. 4522, and notes thereunder. S. 11 must be read subject to the latter part of s. 3 (1), *ante*, p. 5037, under which powers under a local Act may be put an end to.

(b) See the definition of "daily penalty" in s. 13, *post*, p. 5041.

Crown rights.

12. Nothing in this Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown, and in particular nothing herein

contained authorises any local authority to take, use, or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay, or estuary, or any land, hereditaments, subjects, or right of whatsoever description belonging to his Majesty in right of his Crown, and under the management of the Commissioners of Woods or of the Board of Trade respectively, without the consent in writing of the Commissioners of Woods or the Board of Trade, as the case may be, on behalf of his Majesty first had and obtained for that purpose (which consent the said Commissioners and Board are hereby respectively authorised to give).

Section 12.

13. In this Act, if not inconsistent with the context—

The expression “local authority” means an urban sanitary authority, an urban district council, or a rural district council :

Interpretation.

The expression “district of the local authority” means an urban sanitary district, an urban district, or a rural district :

By the P. H. A., 1875, s. 6 (13 Halsbury's Statutes 628), urban sanitary districts were of three kinds : (1) municipal boroughs ; (2) Improvement Act districts ; and (3) local government districts, the urban sanitary authorities being respectively the borough council, the improvement commissioners, and the local board. By the L. G. A., 1894, s. 21 (1), *ante*, p. 4904, urban sanitary authorities were to be called *urban district councils*, and their districts were to be called *urban districts*, but nothing in the section was to alter the style or title of the corporation or council of a borough. By s. 21 (3) the expression “district council” was to include the council of every urban district, whether a borough or not, and the expression “county district” was to include every urban district, whether a borough or not. The L. G. A., 1888, *ante*, p. 4722, created *county boroughs*, and it is clear that in such a borough the mayor, aldermen, and burgesses acting through the council were, as in other boroughs, the *urban sanitary authority*, and their district an *urban sanitary district*, under the P. H. A., 1875, *ante*, p. 4331 ; but it is not clear how far a county borough was an *urban district*, and the council thereof an *urban district council* under the L. G. A., 1894, *ante*, p. 4892. Section 21 of that Act, *ante*, p. 4904, was contained in Part II. of the Act, and s. 35, *ante*, p. 4912, enacted that Part II., save as specially provided by the Act, should not apply to a county borough. The terms *district council* and *urban district* are used in other parts of the Act, *e.g.*, in s. 62, *ante*, p. 4916, and in *Kirkdale Burial Board v. Liverpool Corporation*, *ante*, p. 4916, it was held that the area of a county borough was an *urban district* within the meaning of that section. In order, therefore, that this Act should embrace county boroughs, it was possibly not sufficient to make use of the expressions *urban district council* and *urban district*, and the expressions *urban sanitary authority* and *urban sanitary district* were used, these expressions clearly including the council of a county borough and its district. See now L. G. A., 1933, s. 1, *ante*, p. 736.

The expression “daily penalty” means a penalty for each day on which an offence is continued after conviction therefor :

The expressions “lands” (a), “premises” (b), “owner” (c), “street” (d), “house” (e), “drain” (f), and “sewer” (g) have respectively the same meaning as in the Public Health Acts :

The expressions “clerk,” “medical officer,” “surveyor,” and “inspector of nuisances” mean the clerk, medical officer of health, surveyor, and inspector of nuisances (h) respectively of the district of the local authority :

... (j) :

The expressions “the commencement of this Part” and “the commencement of this section” used in relation to any part or section

Section 13.

of this Act mean respectively the date at which, by an Order made by the Local Government Board, or by the Secretary of State as the case may be, in pursuance of this Act, and subject to any conditions or adaptations specified in that Order, the Part or section is declared to be in force :

Other expressions to which a special meaning is assigned by the Public Health Act, 1875, have respectively the same meaning in this Act as they have in that Act.

(a) See *ante*, p. 4335.

(b) See *ante*, p. 4335.

(c) See *ante*, p. 4335.

(d) See *ante*, p. 4336.

(e) See *ante*, p. 4341.

(f) See *ante*, p. 4343.

(g) See *ante*, p. 4343.

Further by s. 2 (1), *ante*, p. 5036, the Act is to be construed as one with the Public Health Acts.

(h) "Inspectors of nuisances" are now to be designated as "sanitary inspectors" (s. 3 (1), P. H. (Officers) Act, 1921 (10 Halsbury's Statutes 860)).

(j) Former definitions of "dairy," "dairyman" and "infectious disease" were repealed by the Food and Drugs Act, 1938, Sched. IV., *ante*, p. 1455.

14. [Application of Act to Ireland.]

PART II

STREETS AND BUILDINGS.

Deposit of plan to be of no effect after certain intervals.

15. (a) The deposit of any plans or sections of any street or building (b), in pursuance of any byelaw in force in the district, may, by notice in writing (c) to the person by whom the plans or sections have been deposited, be declared by the local authority to be of no effect if the work to which the plans or sections relate is not commenced (d)—

As to plans and sections deposited before the commencement of this section (e), within three years from that date ;

As to plans and sections deposited on or after the commencement of this section (e), within three years of the deposit of the plans and sections.

When the deposit of any plans and sections has been declared to be of no effect, a fresh deposit shall be necessary before the work to which they relate is commenced.

The local authority shall give notice of the provisions of this section to every person intending to lay out a new street or erect a new building (b) in relation to which plans and sections have been deposited before the commencement of this section (e), but the laying out of which street or erection of which building (b) shall not have been commenced, and shall attach a similar notice to the approval of every such intended work in relation to which plans and sections have been deposited subsequent to the commencement of this section (e).

(a) Where this section has been applied in any district by an Order of the Minister of Health (and it is understood that an Order is readily granted, even for rural districts) the authority may, if the prescribed notice be duly given, secure a fresh deposit of plans and sections after the prescribed period. It is not clear whether there will be a right of appeal under s. 7, *ante*, p. 5039, against a "declaration."

(b) This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. III., *ante*, pp. 720, 729, so far as it relates to buildings; see *ibid.*, s. 66, *ante*, Section 15. Note to
p. 240.

(c) As to notices and service thereof, see the P. H. A., 1875, ss. 266, 267, *ante*, pp. 4494—5.

(d) On the question whether work to which plans relate has been commenced, see *White v. Sunderland Corporation* and *Harrogate Corporation v. Dickinson*, *ante*, p. 4440.

(e) As to the term "commencement of this section," see s. 13, *ante*, p. 5041.

16. The local authority may retain any drawings, plans, elevations sections, specifications, and written particulars, descriptions or details. As to plans deposited with local authority.
deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any byelaw thereunder.

This section only becomes operative in a district when applied by an Order of the Minister of Health. It extends only to drawings, plans, etc., approved by the authority. It is understood that an order is readily granted. For the legal position apart from this section, see a leading article at 90 J. P. N. 691.

This section has been repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. III., *ante*, pp. 720, 729, so far as it relates to buildings; see *ibid.*, s. 64, *ante*, p. 220.

17.—(1) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a byelaw in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street, or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or byelaw in force in the district for the regulation of streets and buildings. Power to vary position or direction and to fix beginning and end of new streets.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health Acts, 1875 to 1907, and of any byelaws made under those Acts and in force within the district.

This section only becomes operative when applied to a district by an Order of the Minister of Health. When so applied the powers of an authority will be greatly increased, for the powers which may be obtained by means of byelaws made under the P. H. A., 1875, s. 157, *ante*, p. 4432, extend only to the level, width, and construction of new streets. An order under this section might perhaps have obviated the difficulty experienced by the authority in *Kirby v. Paignton U. D. C.*, p. 4393, *ante*.

It is understood that the powers of the section are readily granted.

Sub-s. (2) imposes an important limitation upon the exercise of the powers conferred by sub-s. (1). See also sub-s. (4), which requires an authority to pay compensation to any person injuriously affected by the exercise of their powers under the section.

Any owner aggrieved by an order of an authority made under this section may appeal to quarter sessions: see s. 7, *ante*, p. 5039.

Reference may also be made to the adoptive provisions of the P. H. A., 1925, in relation to new streets (ss. 29—32, Vol. V., *post*) which considerably extend the powers of a local authority.

(2) The powers of the local authority under this section shall not be exercisable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands

Section 17. by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

(3) Where the local authority make an order under this section a person shall not lay out or construct the new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds (a), and to a daily penalty (b) not exceeding forty shillings.

(a) As to recovery, see s. 6, *ante*, p. 5038, and the note thereto. As to appeal, see s. 7, *ante*, p. 5039.

(b) See for the definition of this term, s. 13, *ante*, p. 5041.

(4) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

The amount of such compensation will be ascertained in the manner provided by the P. H. A., 1875, ss. 179—191, 308, *ante*, pp. 4461—7, 4515. See s. 10, *ante*, p. 5040.

Crossing for
cattle, etc.
over foot-
ways.

18. The provision and use of new means of access for any cattle, any beast of draught or burden, any waggon, cart, or other wheeled carriage exceeding four feet in width or two hundredweight in weight, to or from any premises fronting, adjoining, or abutting on any street which has become a highway repairable by the inhabitants at large, may, where that provision involves passage across or interference with any such part of the street as comprises a kerbed or paved footway, be allowed by the local authority subject to the following conditions (that is to say):

- (a) Every person who intends to provide the new means of access shall give notice in writing of his intention to the local authority, and shall at the same time submit, for the approval of the local authority, a plan showing the position, gradient, and mode of construction of the intended means of access;
- (b) When the plan, with or without amendment, has been approved by the local authority, the person may, upon receiving notice of their approval, proceed to execute the necessary works, but those works shall be executed under the supervision and to the reasonable satisfaction of the local authority, and in accordance with the plan as approved by the local authority;
- (c) After the completion of the works the new means of access may be used, subject to the conditions which, in pursuance of any provisions of the law relating to highways, attach to the use for the like purpose of any carriage way forming part of a highway repairable by the inhabitants at large.

This section only becomes operative when applied to an urban district by an Order of the Minister of Health. It is understood that the powers are readily granted to urban authorities. The section now applies in all rural districts, for by s. 30 (2) and Sched. I., Pt. I., of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, 975, county councils are given the functions of a local authority under the section. Any powers of a rural district council to function under the section by reason of an Order applying it to their district ceases to be exercisable (s. 30 (3), *ibid.*).

Functions under the section in relation to "county roads" in urban districts (other than county roads claimed or deemed to be claimed by an urban district council under

s. 32, L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 906) are exercisable only by county councils and may be exercised in relation to such county roads in any urban district whether an order has been made applying the section to the district or not (s. 31 (5) and Sched. I., Pt. III., *ibid.*, Vol. V. and 10 Halsbury's Statutes 906, 977).

**Note to
Section 18.**
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District councils to whom functions have been delegated under s. 35, *ibid.*, Vol. V. and 10 Halsbury's Statutes 910, will exercise functions under this section as agents for the county council within their district except in relation to roads with respect to which functions have not been delegated and subject to any conditions imposed by the terms of delegation (s. 36 (2), *ibid.*, Vol. V. and 10 Halsbury's Statutes 912). In urban districts these delegated powers extend, of course, only to county roads, since it is only in relation to such roads that the county council have functions under the section. As regards non-county roads in urban districts, the position of the district council is unchanged.

The meaning of the section is not, however, clear. At common law the owner of premises abutting upon a highway is entitled to access to such highway at any point where his premises are in contact with it (see *St. Mary, Newington (Vestry of) v. Jacobs*, *ante*, p. 4402, and cases cited therewith), though this right has been largely abolished on classified roads by the Restriction of Ribbon Development Act, 1935, *ante*, p. 2001. If a frontager owns half the width of the highway, he is entitled to exercise this right to the extent of opening a new cartway across a pavement on to the roadway beyond it so long as there is no unreasonable interference with the public enjoyment of the highway (*St. Mary, Newington (Vestry of) v. Jacobs*, *supra*; cf. *Curtis v. Geeves* (1930), 94 J. P. 71; Digest Supp.), and apparently he may do so even if he does not own any part of the highway (*Rowley v. Tottenham U. D. C.*, [1914] A. C. 95; 78 J. P. 97; 26 Digest 308, 407). On the section being applied in any district, the question may, therefore, arise, "Will it limit this common law right of access?" In *Rowley v. Tottenham U. D. C.*, *supra*, where the local Act contained a similar section, the M.R. said that such section seemed to recognise, and at the same time to regulate, the right to cross a kerbed footpath. If it be the true view that s. 18, *supra*, limits the common law right of access, it would seem that, until a new means of access had been provided in accordance with the section, anybody who in an urban district drove a vehicle across a pavement and injured it would be liable to a penalty under the latter part of s. 149 of the P. H. A., 1875, *ante*, p. 4375. The section in the Tottenham Act imposed liability to a penalty for driving a vehicle across a footway (whether or not injury was caused thereby) until a communication in accordance with the section had been provided. To this extent the section was dissimilar to s. 18 in the text.

In *Marshall v. Blackpool Corporation*, [1935] A. C. 16; 98 J. P. 376; Digest Supp., a local Act contained a somewhat similar provision and the proprietors of land adjoining a highway submitted plans to the local authority for a passage for vehicles from their land across the footpath and so into the carriageway. The authority found no fault with the proposed works as works, but refused to sanction them, having regard to the safety of the public and the convenience of pedestrians and vehicular traffic which might use the highway. It was held that the authority were not entitled to take those matters into consideration. In a judgment which dissented from the eventual decision, SCRUTTON, L.J., said that the view which finally prevailed was impossible to reconcile with *Curtis v. Geeves*, *supra*, in which a conviction was upheld for driving over a pavement into adjoining premises without interfering with the right of passage on the footway of any member of the public. *Semble*, however, that the decisions are reconcilable, on the footing that it is illegal to drive over a footpath not constructed as a means of access, but that the authority must grant permission to construct means of access which could then be driven over. But, as regards roads to which the Restriction of Ribbon Development Act, 1935, *ante*, p. 2001, applies, means of access can no longer be made as of right.

If a local authority seek to impose conditions which a frontager deems to be unreasonable, he may appeal to quarter sessions. See s. 7, *ante*, p. 5039.

19. (a).—(1) Where repairs are required (b) in the case of any street, As to urgent repairs to private streets.
not being a highway repairable by the inhabitants at large, to obviate or remove danger to any passenger or vehicle in the street, the local

Section 19. authority may give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street, and may require (c) the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice.

(a) This section only becomes operative in an urban district when applied thereto by an Order of the M. of H. Its object is apparently to enable an authority to effect temporary repairs to a street when in their opinion the time has not arrived for its being properly made up under the P. H. A., 1875, s. 150, *ante*, p. 4388, or the alternative provisions in the Private Street Works Act, 1892, *ante*, p. 4848. It will be observed, however, that under sub-s. (4), *post*, p. 1114, the owners of the lands and premises in the street can perhaps in some cases by means of a counter-notice force the hands of the authority and compel the *making up* of the street.

The section now applies in all rural districts, for by s. 30 (2) and Sched. I., Pt. I., of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 904, 974, county councils are given the functions of a local authority under the section. Any powers of a rural district council to function under the section by reason of an order applying it to their district cease to be exercisable (s. 30 (3), *ibid.*). Rural district councils to whom functions have been delegated under s. 35, *ibid.*, Vol. V. and 10 Halsbury's Statutes 910, will exercise functions under this section as agents for the county council *within their district* except in relation to roads with respect to which functions have not been delegated and subject to any conditions imposed by the terms of delegation (s. 36 (2), *ibid.*). The Private Street Works Act, 1892, is now in force in all rural districts (see the note to that Act at *ante*, p. 4848), and any proceedings consequent upon a counter notice under sub-s. (4) must in such a district be taken under that Act.

Where it is disputed that a street in respect of which notices have been served under this section is a highway repairable by the inhabitants at large, the question may be raised on an appeal against the requirement of the local authority under s. 7, *ante*, p. 5040, or before the justices when, after the money has been spent, proceedings are taken for its recovery, and the fact that the owner has not appealed against the requirement of the local authority under s. 7, *ante*, will not preclude him from raising the question on such proceedings (*Shoeburyness U. D. C. v. Burges* (1924), 22 L. G. R. 684; 46 M. C. C. 211; 26 Digest 534, 2332).

(b) The question whether work required to be done amounts to "repairs" is one of fact (*Shoeburyness U. D. C. v. Burges*, *supra*). See, also, *Ballard v. Wandsworth Borough Council* (1906), 70 J. P. 331; 95 L. T. 118; 26 Digest 496, 2049, decided on the somewhat similarly worded s. 3 of the Metropolis Management Amendment Act, 1890 (11 Halsbury's Statutes 1014). In *R. v. Recorder of Belfast*, [1919] 2 I. R. 171, it was held that an appeal lies to quarter sessions against a requirement under this sub-section.

(c) When an owner is called upon under the next sub-section to repay to the authority the expenses (or his share thereof) incurred by them, he can appeal to the Minister of Health.

(2) If, within the time specified in the notice, the repairs described in the notice are not executed, the local authority may execute the repairs, and may recover summarily, as a civil debt (a), the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining, or abutting on the street, bears to the total extent of all lands and premises so fronting, adjoining, or abutting.

(a) See the P. H. A., 1875, s. 251, *ante*, p. 4481, and note (b) thereunder as to the recovery of civil debts. As to appeal, see note (c), *supra*.

Repairs done to two streets must not be included in the same account and apportionment (*Nash v. Giles* (1926), 91 J. P. 19; 136 L. T. 352; Digest Supp.). Upon proceedings for recovery the justices have no jurisdiction to investigate the accounts

and correct an incorrect apportionment. If the apportionment is incorrect, the justices must dismiss the complaint (*ibid.*).

Note to
Section 19.

(3) Where the name or place of abode of an owner cannot be found by the local authority, a copy of the notice shall be sent by post to or left with the occupier of the lands and premises to which the notice relates, or, if there be no such occupier, shall be affixed upon some conspicuous part of the lands and premises.

As to the difficulty of recovering expenses in cases where the owner of the lands is unknown, see *Friern Barnet U. D. C. v. Adams*, [1927] 2 Ch. 25; 91 J. P. 60; Digest Supp., and other cases cited in note to P. H. A., 1875, s. 257, *ante*, p. 4489.

(4) In every case in which, within the time specified in the notice, the majority in number or rateable value of owners of lands and premises in the street, by a notice in writing, require the local authority to proceed, in relation to the street, under section one hundred and fifty of the Public Health Act, 1875, or, if the Private Street Works Act, 1892, is in force in the district, under that Act, the local authority shall so proceed; and where the local authority so proceed they shall, on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on and after the date of the declaration the street shall become a highway so repairable.

See the notes under sub-s. (1), *ante*, p. 5045. The authority of a district in which the Private Street Works Act, 1892, *ante*, p. 4848, had been adopted, and to which this section had been applied, served notice to repair a road under s. 19 (1), *ante*, p. 5045, on the persons whom they understood to be the owners of the adjoining premises. The notice recited that the road was not a highway repairable by the inhabitants at large, but in fact there was along the middle of the road a footpath which was so repairable. The majority of the owners served a counter-notice requiring the authority to proceed under the Act of 1892. The authority approved a provisional apportionment under that Act, and some of the owners served notice of objection on the ground that the works were unreasonable and too costly. The authority then withdrew their original notice, being satisfied that it would be unwise to make up the road in a permanent manner as damage would be done to it by building operations. It also appeared that some of the owners of adjoining premises had not been served with the original notice, and no notice had been affixed to the land. On an application for a *mandamus* requiring the authority to proceed under the Act of 1892, it was held that in view of all the legal questions raised the rule ought not to be made absolute; and the court doubted whether service of a counter-notice under s. 19 (4) does more than require the authority to proceed under one or other of the sections mentioned if they see fit to proceed at all (*R. v. Epsom U. D. C., Ex parte Course* (1912), 76 J. P. 389; 26 Digest 539, 2382).

Where in consequence of a counter-notice a street is made up, the authority cannot exercise a discretion as to taking it over such as is permitted by the P. H. A., 1875, s. 152, *ante*, p. 4423; the P. H. A. A. A., 1890, s. 41, *ante*, p. 4815; and the Private Street Works Act, 1892, s. 19, *ante*, p. 4866. The sub-section corresponds with s. 20 of the last-mentioned Act, *ante*, p. 4867, and s. 82 of the P. H. A., 1925, Vol. V., *post*, but under those sections *all* the various works must have been done, whereas under the text it would appear to be sufficient if such works only be done as are for the time being *necessary*.

Quære, whether s. 7, *ante*, p. 5039, would enable owners to appeal against a "declaration."

20. If the footway of any street repairable by the inhabitants at large be injured by or in consequence of any excavations or other works on lands adjoining thereto, the local authority may repair or replace the footway so injured, and all damages and expenses of or arising from

Recovery of
damages
caused to
footways by
excavations.

Section 20. such injury and repair or replacement shall be paid to the local authority by the owner of the lands on which such excavations or other works have been made, or by the person causing or responsible for the injury.

Functions under this section in rural districts and in relation to county roads (other than claimed roads) in urban districts are exercisable by county councils only. See the notes to s. 18, *ante*, p. 5044.

In an urban district streets repairable by the inhabitants at large are vested in the council, who have, in respect of the surface of a street, and of so much of the actual soil as may be necessary for its preservation as a road, the same rights of action in respect of trespass, and of a nuisance damaging their property, as a private owner would have. See *Wednesbury Corporation v. Lodge Holes Colliery Co., Limited, Cavan C. C. v. Kane*, *ante*, p. 4378. If s. 20 be applied to the district by an Order of the M. of H. (and it is understood that an Order is readily obtained), they will be able to take summary proceedings to recover damages caused to footways by excavations or other works on lands adjoining the street. This is an addition to their power to take summary proceedings in respect of injuries to pavements, etc. under the P. H. A., 1875, s. 149, *ante*, p. 4375.

As to recovery of the expenses and appeal, see ss. 6, 7, *ante*, pp. 5038—9.

Power to
alter names
of streets.

21. The local authority may, with the consent of two-thirds in number and value of the ratepayers in any street, alter the name of such street or any part of such street. The local authority may cause the name of any street or of any part of any street to be painted or otherwise marked on a conspicuous part of any building or other erection.

Any person who shall wilfully and without the consent of the local authority, obliterate, deface, obscure, remove, or alter any such name, shall be liable to a penalty not exceeding forty shillings.

Where this section is applied by an Order of the Minister of Health to an urban district, it will supplement the Towns Improvement Clauses Act, 1847, s. 64 (*ante*, p. 4202); incorporated by the P. H. A., 1875, s. 160, *ante*, p. 4443, which confers the power of naming a street upon urban authorities. It might also be applied to rural districts; but the practice of the Minister in such cases is understood to be to confine it to parishes in which s. 64 of the Act of 1847 is in force.

Further powers as to naming streets are contained in ss. 17—19 of the P. H. A., 1925, Vol. V., *post*. In districts where s. 18 of that Act has been adopted, the section in the text will cease to have effect (s. 18 (5), *ibid.*).

Seem, an aggrieved person might appeal under s. 7 (1), *ante*, p. 5039.

There is no statutory authority for numbering houses at the public expense.

As to the recovery of this penalty and appeals, see ss. 6, 7, *ante*, pp. 5038—9.

Buildings at
corner of
streets.

22. The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine, and for any loss which may be sustained through the exercise of the powers by this section conferred upon the local authority they shall pay compensation.

This section only becomes operative in a district when applied thereto by an Order of the Minister of Health; and it is understood that powers under it are not granted unless special grounds are shown. The amount of compensation will be ascertained in the manner provided by the Public Health Acts. See s. 10, *ante*, p. 5040, and the note thereunder.

See s. 33, *post*, p. 5053, as to buildings of railway and other companies.

An owner aggrieved by any requirement under the section might appeal to quarter sessions. See s. 7, *ante*, p. 5039.

**Note to
Section 22**
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Further powers to prevent the obstruction of view at street corners are conferred by the Roads Improvement Act, 1925, s. 4, Vol. V., *post*.

* * * * *

28. The local authority may remove, appropriate, use, and dispose of all old materials existing in any street at the time of the execution by the local authority of any works in such street, unless the owners of buildings and lands in such street, within forty-eight hours after notice so to do served on them by the surveyor, remove such materials or their respective proportions thereof, and the local authority shall allow such sum as may be the reasonable value thereof to such owners for any materials which have been used or removed by the local authority, and in case of dispute the amount to be allowed shall be settled in the manner provided by the Public Health Act, 1875, with respect to compensation for damage sustained by reason of the exercise of any powers of that Act.

Removal of
materials in
streets.

When this section has been applied to a district the powers of the authority in connection with the making up of private streets will be increased. Unless the owners wish to retain them, the authority may use old materials in making up the street or elsewhere, or may dispose thereof. The reasonable value is to be allowed, and in case of dispute such value will be ascertained in manner provided by the P. H. A., 1875, s. 308, *ante*, p. 4515.

This section has not been applied to county councils by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883, although they are now the authority for exercising functions under the Private Street Works Act, 1892, in rural districts (see the notes to that Act at *ante*, p. 4848).

29. It shall not be lawful for any person without the consent of the local authority in writing first obtained to lay any building materials, rubbish, or other thing, or make any excavation on or in any street repairable by the inhabitants at large, and when with such consent any person lays any building materials, rubbish, or other thing, or makes any excavation on or in any street, he shall, at his own expense, cause the same to be sufficiently fenced and a sufficient light to be fixed in a proper place on or near the same and to be continued every night from sunset to sunrise, and shall remove such materials, rubbish, or thing or fill up such excavation (as the case may be) when required by the local authority: and, if any person fails to comply in any respect with the requirements of this enactment, he shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the local authority may remove any such materials, rubbish, or thing, or fill up such excavation (as the case may be), and recover the expenses from the offender summarily as a civil debt.

Deposit of
building
materials or
excavations
not to be
made with-
out consent.

Functions under this section in rural districts and in relation to "county roads" (other than claimed roads) in urban districts are exercisable by county councils. See the notes to s. 18, *ante*, p. 5044.

This section (on being applied to a district) will supplement the provisions of the Towns Improvement Clauses Act, 1847, s. 81 (*ante*, p. 4210), which as regards urban districts is incorporated by the P. H. A., 1875, s. 160, *ante*, p. 4443. It enables an authority to remove materials, etc. or fill up excavations and recover the expenses. It is understood that the Minister of Health readily grants these powers.

**Note to
Section 29.**
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Within the London Traffic Area, the regulations made under the London Traffic Act, 1924, Sched. III (19), Vol. V., *post*, must be complied with.

As to the recovery of penalties, see s. 6, *ante*, p. 5038. As to the recovery of civil debts, see note (b) under the P. H. A., 1875, s. 251, *ante*, p. 4481.

See also as to the displacement or taking up of streets in urban districts the P. H. A., 1875, s. 149, *ante*, p. 4375.

As to the right of appeal, see s. 7, *ante*, p. 5039.

Dangerous
places to be
repaired or
enclosed.

30. With respect to the repairing or enclosing of dangerous places the following provisions shall have effect (namely) :

- (1) If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure, or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure dangerous to the persons lawfully using the street or footpath, the local authority may, by notice in writing served upon the owner, require him, within the period specified in the notice and hereinafter in this section referred to as the "prescribed period," to repair, remove, protect, or enclose the same so as to prevent any danger therefrom :
- (2) If, after service of the notice on the owner, he shall neglect to comply with the requirements thereof within the prescribed period, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses thereof shall be payable by the owner, and may be recovered summarily as a civil debt.

See s. 33, *post*, p. 5053, as to the exemption of the buildings (other than a dwelling-house) of railway and other companies.

This section only becomes operative in a district when applied thereto by an Order of the Minister of Health. In connection with an application for the powers of this section, the Minister will doubtless require to know whether there are in fact dangerous places in the district. Many councils, both urban and rural, have obtained the requisite order. The L. G. B. and M. of H. have stated that as a general rule they do not consider it desirable that the section should apply to the reconstruction and repair of retaining walls. It is therefore the practice to insert a condition in the Order excepting from the operation of the section any wall or structure in so far as the same is used either for the support of any street or public footpath repairable by the inhabitants at large, or for the protection of any street or public footpath from damage or obstruction by reason of the surface of the street or footpath being above or below the level of the surface of the adjoining land, unless the wall or other structure was built after the street or footpath became a highway repairable by the inhabitants at large by or at the expense of a person other than the highway authority responsible for the repair of the street or footpath.

In urban districts local authorities already possess certain powers of dealing with buildings, walls, or attachments thereto, which are ruinous and dangerous to the public or adjoining occupiers : see the Towns Improvement Clauses Act, 1847, ss. 75—78, *ante*, pp. 4207—4209, as incorporated with the P. H. A., 1875, by *ibid.*, s. 160, *ante*, p. 4443. By the Towns Improvement Clauses Act, 1847, s. 83, *ante*, p. 4211 (also incorporated by s. 160), an urban council are directed to cause to be repaired, protected or enclosed, any building or hole or any other place near any street which is dangerous to passengers along any street, and the expenses of such repair, etc. are made recoverable as damages. See also the power to place fences alongside streets for the safety of foot passengers given by the P. H. A., 1875, s. 149, *ante*, p. 4375. These provisions do not apply in a rural district unless urban powers in respect thereof have been conferred upon the rural council by an Order of the L. G. B. or the Minister of Health. See also the provisions of the Quarry (Fencing)

Act, 1887, *ante*, p. 4696, the Metalliferous Mines Regulation Act, 1872, and the Coal Mines Act, 1911 (*ante*, p. 4321, and *post*, p. 5120), which are of general application.

**Note to
Section 30.**

It will be seen that where s. 30 is applied to a district previously existing powers as to dangerous buildings or places will be largely supplemented. See also s. 31, *infra*.

A person aggrieved by any action taken by an authority under s. 30 may appeal, but whether to quarter sessions or to the M. of H. is not clear. See s. 7 and notes thereto, *ante*, p. 5039.

B. owned a narrow strip of land from fourteen to fifty feet in width between a street and a disused chalk pit. There was no fence between the street and the strip or between the strip and the pit. B. did not own the pit. Originally the edge of the pit was outside B.'s land, but in course of years some feet of his land had, from natural causes, slipped down into the pit, and the court found that the existence of the pit unfenced was a source of danger to persons lawfully using the street. It was held that the pit was "in a situation fronting, adjoining or abutting on" the street, and that the plaintiffs were justified in requiring B. to fence the edge of the pit on his land (*Carshalton U. D. C. v. Burrage*, [1911] 2 Ch. 133; 75 J. P. 250; 7 Digest 294, 204).

The appellants owned certain parts of the bank of the Mersey over which an ancient footpath ran, but were under no obligation to repair the footpath *ratione tenuræ*. Portions of the bank were washed away, and portions of the footpath fell into the river, and further portions were threatening to fall, and the way was thereby rendered dangerous to persons lawfully using the same. The local authority called upon the appellants under this section to repair and protect the bank so as to prevent danger therefrom. It was held that the section did not apply to such a case (*Cheshire Lines Committee v. Heaton Norris Urban District Council*, [1913] 1 K. B. 325; 76 J. P. 462; 26 Digest 568, 2612). This case was distinguished from one which arose under a local Act which referred (*inter alia*) to any "ground" deemed by the surveyor to be dangerous (*Gaby v. Palmer* (1916), 80 J. P. 212; 85 L. J. K. B. 1240; 38 Digest 209, 436).

As to the possible liability of a council who leave unguarded a ravine by the side of a street which they make up, see *McClelland v. Manchester Corporation* and *Oldham v. Sheffield Corporation*, on pp. 4354—5, *ante*.

As to accidents to persons and children in public parks or on land belonging to an authority, see cases on pp. 645 *et seq.*, *ante*.

31. If any land (other than land forming part of any common) adjoining any street is allowed to remain unfenced or if the fences of any such land are allowed to be or remain out of repair, and such land is, owing to the absence or inadequate repair of any such fence, a source of danger to passengers, or is used for any immoral or indecent purposes, or for any purpose causing inconvenience or annoyance to the public, the Local Government Board on the application of the local authority may by Order empower the local authority to proceed under this section, and, in that case, at any time after the expiration of fourteen days from the service upon the owner or occupier of notice in writing by the local authority requiring the land to be fenced or any fence of the land to be repaired, the local authority may cause the land to be fenced or may cause the fences to be repaired in such manner as they think fit, and the reasonable expenses thereby incurred shall be recoverable from such owner or occupier summarily as a civil debt.

Fencing
lands
adjoining
streets.

In so far as it makes provision for removing a source of danger to passengers, this section (on being applied to a district) will supplement the provisions of the last section. The other powers conferred by it were novel so far as general legislation is concerned. Two Orders of the Minister of Health are necessary. In addition to the Order declaring the section to be in force in the district, a second Order must be obtained (by subsequent application) empowering the authority to proceed under the section as regards a particular piece of land.

**Note to
Section 31.**

Here again it would seem that there would be a right of appeal to sessions against the "requirement." See s. 7, *ante*, p. 5039, and note (b) to s. 19 (1), *ante*, p. 5045.

The section has been declared to be in force in many districts, but it does not follow that the second order will be granted as a matter of course. In fact the Minister requires, when action is proposed, to be furnished with full particulars as to the pieces of land which have become dangerous or a nuisance, with the names of the owners, and a copy of any correspondence which has taken place, and with a plan and photographs of the spot. A local inquiry is then directed before any decision is given.

A local Act provided that "If any land . . . adjoining any street is allowed to remain unfenced . . . and such land is in the opinion of the council owing to the absence . . . of any such fence a source of danger to passengers or is used for any immoral or indecent purposes or for any purpose causing inconvenience or annoyance to the public," the council might fence the land and recover the cost. It was held that, if a piece of land is not provided with a fence reasonably effective for the purpose of preventing persons from going on to it, it is "unfenced," and also that upon the true construction of the section the question whether the land is "used for any immoral or indecent purposes or for any purpose causing inconvenience or annoyance to the public," is a question for the justices (*Upjohn v. Willesden U. D. C.*, [1914] 2 K. B. 85; 78 J. P. 54; 26 Digest 567, 2600). The present section does not contain the words "in the opinion of the council." A local Act provided that if the corporation were of opinion that danger to the public was likely to ensue by reason of land abutting on streets not being fenced, the owner of any such land should when required by the corporation and to their satisfaction fence off the land from the street and should afterwards keep such fence in repair. It was held that the Act did not apply to the retaining walls of an old turnpike road, but only to new streets where there were no fences and which, in the opinion of the corporation, were dangerous to the public (*Rotherham Corporation v. Fullerton* (1884), 50 L. T. 364; 26 Digest 567, 2599).

It may be mentioned that an owner or occupier of land is not under any obligation towards the public using a road to fence the road from his land so as to prevent harmless animals, like sheep, from straying upon it (*Heath's Garage, Ltd. v. Hodges*, [1916] 2 K. B. 370; 80 J. P. 321; 26 Digest 429, 1486).

Hoardings to be securely erected.

32.—(1) A person shall not use any hoarding or similar structure which is in, or abuts on, or adjoins any street, for any purpose, unless it is securely fixed to the satisfaction of the local authority.

(2) If any person acts in contravention of this section he shall be liable, in respect of each offence, to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

This section only becomes operative in a district when applied thereto by an Order of the Minister of Health, who, however, readily complies with applications. Its provisions are not limited to hoardings erected during building operations, but apply to hoardings erected for any purpose, and are therefore of wider application than the Towns Improvement Clauses Act, 1847, s. 80, *ante*, p. 4209, or the P. H. A. A. A., 1890, s. 34, *ante*, p. 4811.

Apparently an appeal will lie to quarter sessions (s. 7, *ante*, p. 5039).

In *Burnett v. Covell* (1903), 68 J. P. 93; 90 L. T. 29; 26 Digest 567, 2601, under a similar clause in a local Act, the court refused to interfere with a finding that a hoarding in a field on a hedge bank parallel to the street, and only three feet from it, did not "abut" on the street. This case was distinguished in *Rockleys, Ltd. v. Pritchard* (1909), 74 J. P. 11; 101 L. T. 575; 26 Digest 567, 2602, where a hoarding stood back 10 feet from the street, but there was no intervening fence; there the court approved a finding that it was either "in or abutting on or adjoining" the street, as it had become for the time being the *de facto* boundary of the street. It was again distinguished in *Stockport Corporation v. Rollinson* (1910), 74 J. P. 236; 102 L. T. 567; 26 Digest 567, 2603; there R. erected two connected hoardings on private land at an angle made by two streets; one was seven inches from the edge of the street and six inches from an iron fence, which, however, did not obscure the view of posters on the hoarding; the other was twenty-five inches from the edge of

the street and eleven inches from the parapet wall of a bridge bounding the street. On an information for erecting the hoardings "in" the street without consent, the justices held that as no part of the hoardings extended up to or upon the highway they were bound by the decision in *Barnett v. Covell* to hold that they were not "in" the street. The court sent the case back with an intimation that on the facts the hoardings were clearly "in" the street. See further as to "abutting" or "adjoining," cases cited on pp. 4400 *et seq.*, *ante*.

**Note to
Section 32.**

33. Nothing in this Part or in any byelaws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorised to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation.

The words in italics have been repealed by the P. H. A., 1936, Sched. III., Pt. III., *ante*, p. 729.

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PART VI.

RECREATION GROUNDS.

It is obviously the intention of the Legislature that this Part of the Act (two sections only) shall be applied as a whole, for s. 77, *post*, p. 5055, is supplemental merely to s. 76, *infra*. Its provisions will not be operative in a district until applied to it by an Order of the Minister of Health. The Minister will probably require applications to be supported by information as to the parks and pleasure grounds provided by the council or under their management or control, and as to the particular powers which are considered to be necessary. Many Orders have been issued.

As will be seen from later notes the powers have been supplemented by the P. H. A., 1925, s. 56, Vol. V. and 13 Halsbury's Statutes 1139, which applies to all districts in which this Part of this Act is in force.

76.—(1) The Local Government Board, for the purposes of this section, may make rules prescribing restrictions or conditions subject to which any powers conferred by the section shall with respect to any area in a public park or pleasure ground be exerciseable in relation to the enclosure or setting apart of the area, or in relation to the use of the area as the site of a building or convenience.

**Powers as
to parks and
pleasure
grounds.**

Subject to the restrictions or conditions prescribed by rules made under this section, the local authority shall, in addition to any powers under any general Act, have the following powers with respect to any public park or pleasure ground provided by them or under their management and control, namely, powers—

- (a) To enclose during time of frost any part of the park or ground for the purpose of protecting ice for skating, and charge admission to the part enclosed, but only on condition that at least three-quarters of the ice available for the purpose of skating is open to the use of the public free of charge ;
- (b) To set apart any such part of the park or ground as may be fixed by the local authority, and may be described in a notice board

Section 76.

affixed or set up in some conspicuous position in the park or ground for the purpose of cricket, football, or any other game or recreation, and to exclude the public from the part set apart while it is in actual use for that purpose (a) ;

- (c) To provide any apparatus for games and recreations, and charge for the use thereof, or let the right of providing any such apparatus for any term not exceeding three years to any person ;
- (d) To provide or contribute towards the expenses of any band of music to perform in the park or ground (b) ;
- (e) To enclose any part of the park or ground, not exceeding one acre, for the convenience of persons listening to any band of music, and charge admission thereto (c) ;
- (f) To place, or authorise any person to place, chairs or seats (d) in any such park or ground, and charge for, or authorise any person to charge for, the use of the chairs so provided ;
- (g) To provide and maintain any reading rooms, pavilions, or other buildings and conveniences, and to charge for admission thereto, subject in the case of reading rooms to the limitation that such a charge shall not be made on more than twelve days in any one year, nor on more than four consecutive days ;
- (h) To let any pavilion or other building so provided by them to any person for the purpose of entertainments, and authorise that person to charge for admission thereto ;
- (i) To provide and maintain refreshment rooms in any such park, and either manage them themselves, or, if they think fit, let them to any person for any term not exceeding three years.

(2) Any expenses of the local authority incurred in the exercise of the powers given to them by this section shall be defrayed out of the fund or rate out of which the expenses of the park or ground, as to which the powers are exercised, are payable, and any receipts arising from the exercise of any such powers shall be carried to the credit of the same fund or rate.

(3) *The expenses incurred by the council in the exercise of their power under this section to provide or contribute to a band shall not in any one year exceed an amount equal to that which would be produced by a rate of an amount which shall be approved by the Local Government Board, and shall not exceed a penny on the property liable to be assessed for the purpose of the rate out of which the expenses of the park or ground are payable, as assessed for the time being for the purposes of that rate (e).*

(4) No power given by this section shall be exercised in such a manner as to contravene any covenant or condition subject to which a gift or lease (f) of a public park or pleasure ground has been accepted or made, without the consent of the donor, grantor, lessor, or other person or persons entitled in law to the benefit of such covenant or condition.

The effect of this section will be gathered on reference to the notes under the P. H. A., 1875, s. 164, *ante*, p. 4451.

The powers conferred by this section are considerably extended by s. 56 of the P. H. A., 1925, Vol. V., *post*, which applies to all districts in which this part of the 1907 Act is in force.

As to the rating of a park in which these powers had been widely exercised, see *Yorkshire (North Riding) County Valuation Committee v. Redcar Corporation* (1942), 107 J. P. 11. Note to
Section 76.

(a) Reasonable sums may be charged for the use of parts so set apart (s. 56 (5), P. H. A., 1925, Vol V., *post*). Formerly, the power to charge was limited to the use of apparatus provided under s. 76 (1) (d), *ante*, p. 5054. See also the Physical Training and Recreation Act, 1937, *ante*, p. 1570.

(b) Local authorities may now provide or contribute towards concerts or entertainments in addition to bands (s. 56 (1), P. H. A., 1925, Vol. V., *post*). As to the limitation on the expenditure of the local authority in providing bands, etc., see now s. 56 (3), P. H. A., 1925, as amended by s. 75 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 932.

(c) A part enclosed under this provision may also be used for a concert or entertainment (s. 56 (2), P. H. A., 1925, Vol. V., *post*). The payment for a seat within the enclosure in order to listen to the performance is a payment for admission to an entertainment within the meaning of the Finance (New Duties) Act, 1916, and is subject to entertainments duty (*Cordiner v. Stockham*, [1920] 1 K. B. 104; 83 J. P. 246; 39 Digest 301, 788). The Finance (New Duties) Act, 1916 (16 Halsbury's Statutes 799), has been amended by the Finance (No. 2) Act, 1931, and the Finance Act, 1935. The duty is not payable on admission of non-bathers to a bathing pool (*Att.-Gen. v. Southport Corporation*, [1934] 1 K. B. 226; Digest Supp.).

(d) For an action against an authority in respect of insecure seats supplied by them to a bandmaster for beach entertainments, see *Dare v. Bognor U. D. C.* (1912), 76 J. P. 425; 12 Digest 615, 5088. See also *Chapelton v. Barry U. D. C.*, [1940] 1 K. B. 532; [1940] 1 All E. R. 356; Digest Supp. Power to place seats in public streets may be obtained by adopting s. 14, P. H. A., 1925, Vol. V., *post*.

(e) This sub-section is now of no effect (s. 56 (3), P. H. A., 1925). A local authority may now expend a sum amounting to the product of a rate of 1½d. without the approval of the Minister, but the Minister may sanction an expenditure in excess of this sum so long as the total expenditure does not exceed the product of a rate of 2½d. In arriving at the amount expended, receipts may be deducted. The Minister may in special cases allow the rates to be of a higher amount than 1½d. and 2½d. (see s. 56 (3) of the P. H. A., 1925, as amended by s. 75 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 932).

(f) Note that the sub-section mentions gifts and leases, but not purchases.

77. The local authority may appoint officers for securing the observance of this Part of this Act, and of the regulations and byelaws made thereunder, and may procure such officers to be sworn in as constables for that purpose, but any such officer shall not act as a constable unless in uniform or provided with a warrant. Power to
appoint
officers.

See the notes under the P. H. A., 1875, s. 164, *ante*, p. 4451.

PART VII.

POLICE.

The provisions of this Part of the Act will only be operative in a district when applied to it by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 1104, 1105.

78. [Regulations as to street traffic. Repealed as from December 1, 1930, by the Road Traffic Act, 1930, s. 122, Sched. V., and S. R. & O., 1930, No. 1011 (see Vol. V. and 23 Halsbury's Statutes 687, 696, 700).]

79. Every person who shall ride or drive so as to endanger the life or limb of any person or to the common danger of the passengers in any thoroughfare shall be liable to a penalty not exceeding forty shillings and may be arrested without warrant by any constable who witnesses the offence. Dangerous
riding and
driving.

**Note to
Section 79.**

This section was repealed by s. 9 and Sched. V. of the P. H. A., 1925, Vol. V., *post*. By s. 74 (2), *ibid.*, Vol. V., *post*, which is of general application, the section is reproduced with an increased penalty.

As to leading
or driving
animals.

80. The local authority may, by order, prescribe the streets in which, and the manner according to which, the leading or driving of animals shall be permitted within their district, provided that the route or routes which it shall be lawful for the local authority so to prescribe shall not be such as would prevent the passage of cattle between any market on the one hand, and any railway station or landing wharf in the district or any place beyond the district on the other hand, when such animals are merely passing between such market and railway station, landing wharf, or other place aforesaid, and the local authority shall be bound to allow at all times a reasonably short and efficient route or routes for the passage of such animals. Provided also that any such order shall only operate between the hours of nine in the morning and nine in the evening, and shall not prevent the owner of any animals driving the same to or from his own premises, and nothing in this enactment contained shall authorise the local authority to interfere with the leading or driving of any animals to any duly licensed slaughter-house.

This section only becomes operative when applied to a district by Order of the Home Secretary: see s. 3 (1), (4), *ante*, pp. 5037—8. No penalty is provided for the breach of an Order.

The plaintiff was riding a bicycle along a highway after dark. She had a lamp on her bicycle and it was burning properly. The defendant, a farmer, wished to transfer a colt, an unbroken animal about 18 months old, from one farm to another, and was bringing the colt along the road. In front he had a boy leading a mare, then came the colt, and behind the colt the defendant was driving a trap to keep the colt from bolting back. When the plaintiff approached, the colt was startled by the light on her bicycle and darted from one side of the road to the other, and knocked the plaintiff over, causing injuries for which she sued the defendant. It was held that as the colt had done just what in the circumstances might have been expected, the defendant was liable (*Turner v. Coates*, [1917] 1 K. B. 670; 33 T. L. R. 79; 2 Digest 235, 230).

Extending
definition of
"public
place" and
"street" for
certain
purposes.

81. Any place of public resort or recreation ground belonging to, or under the control of, the local authority, and any unfenced ground adjoining or abutting upon any street in an urban district shall for the purpose of the Vagrancy Act, 1824, and of any Act for the time being in force altering or amending the same, be deemed to be an open and public place, and shall be deemed to be a street for the purposes of section twenty-nine of the Town Police Clauses Act, 1847, and also for the purposes of so much of section twenty-eight of that Act as relates to the following offences:

Every person who suffers to be at large any unmuzzled ferocious dog, or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle:

Every common prostitute or night walker loitering and importuning passengers for the purpose of prostitution:

Every person who wilfully and indecently exposes his person:

Every person who publicly offers for sale or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language : Section 81.

Every person who wantonly discharges any firearm or discharges any missile or makes any bonfire :

Every person who throws or lays any dirt, litter, ashes, or night soil, or any carrion, fish, offal, or rubbish, on any street.

This section only becomes operative when applied to a district by Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 5037—8.

The Vagrancy Act, 1824, s. 3 (12 Halsbury's Statutes 913) (*inter alia*), provides that every common prostitute wandering in the *public streets or public highways*, or in any *place of public resort*, and behaving in a riotous or indecent manner ; and every person wandering abroad, or placing himself or herself in any *public place, street, highway, court or passage* to beg or gather alms, or causing or procuring or encouraging any child or children so to do ; shall be deemed an idle and disorderly person within the true intent and meaning of this Act ; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month. *Ibid.*, s. 4 (*op. cit.* 915), deals (*inter alia*) with persons wilfully exposing to view, *in any street, road, highway, or public place*, any obscene print, etc. and with any person wilfully exposing his person in any *street, road, or public highway*, or in the view thereof, or in any *place of public resort*, with intent to insult any female. So far, therefore, as these sections are concerned, the text if applied to a district will not alter the law, for in neither is the expression "open and public place" used.

By the Vagrant Act Amendment Act, 1873, s. 3 (*op. cit.* 947), every person playing or betting by way of wagering or gaming *in any street, road, highway, or other open and public place, or in any open place to which the public have or are permitted to have access*, at or with any table or instrument of gaming, or any coin, card, token, or other article used as an instrument or means of such wagering or gaming, at any game or pretended game of chance, shall be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824 (*op. cit.* 913), and as such may be convicted and punished under the provisions of that Act, or, in the discretion of the justice or justices trying the case, in lieu of such punishment, by a penalty for the first offence not exceeding forty shillings, and for the second or any subsequent offence not exceeding five pounds. So far as this section is concerned the text if applied to a district will not alter the law much, even if at all. Firstly, a place of public resort or recreation ground belonging to, or controlled by, an authority is, *semble*, apart from it "an open place to which the public have or are permitted to have access" : see *Langrish v. Archer and Airton v. Scott*, p. 5058, *post*. Secondly, a piece of unfenced ground adjoining or abutting upon a street, upon which members of the public are in fact found, would also appear to be "an open place to which the public have access" ; even if it were necessary to find that the public are permitted to have access to it, the mere absence of any fencing would probably justify such a finding unless it was proved that the owner had tried to turn persons off, and had been defied by them.

In the Vagrancy Act, 1898 (4 Halsbury's Statutes 722), the expression used in s. 1 (*op. cit.*) is *public place*, and the text would, therefore, in this instance appear to make no alteration in the law.

The text further provides that for the purposes of s. 29 of the Town Police Clauses Act, 1847, *ante*, p. 4233, and of s. 28 of that Act, *ante*, p. 4226, so far as certain specified offences are concerned, any place of public resort or recreation ground belonging to, or under the control of a local authority, and any unfenced ground adjoining or abutting upon any street in an urban district shall be deemed to be a *street*. Town Police Clauses Act.

S. 29 of the Town Police Clauses Act, 1847, imposes a penalty upon any person "drunk in any street and guilty of any riotous or *indecent* behaviour." It was, however, afterwards by the Licensing Act, 1872, s. 12 (9 Halsbury's Statutes 939),

**Note to
Section 81.**

as amended by the Licensing Act, 1902, s. 8 (*op. cit.* 967), enacted (*inter alia*) that every person who in any highway or other public place (*including in that expression any place to which the public have access, whether on payment or otherwise*) is guilty while drunk of riotous or *disorderly* behaviour, etc. shall be punishable as therein mentioned. Unless, therefore, indecent behaviour is not necessarily disorderly behaviour, it is difficult to see how the text will amend the law.

By s. 15 (3) of the Road Traffic Act, 1930, Vol. V. and 23 Halsbury's Statutes 623, a person liable to be charged with driving a motor vehicle when under the influence of drink or drugs is not to be charged under s. 12 of the Act of 1872 with being drunk while in charge, on a highway or other place, of a carriage.

S. 28 of the Town Police Clauses Act, 1847, *ante*, p. 4226, deals with a large number of offences committed "in any street" and "to the obstruction, annoyance, or danger of the residents or passengers." Seven of these offences are selected, and on the text being applied to a district by Order of the Home Secretary, an advantage will certainly be gained. The first two of these offences deal with ferocious dogs and furious riding or driving, and call for no comment. The third, which deals with solicitation, calls for notice. The existing provision in the Vagrancy Act, 1824 (12 Halsbury's Statutes 913) is restricted to public streets and highways and places of public resort, and to riotous and indecent behaviour; probably under that section a piece of vacant land in a town, if frequented by the public, would be held to be a place of public resort, but where the new provision is put in force it will free the hands of the police and relieve them from the necessity of proving that the solicitation was of such a nature as to be "riotous and indecent," a point as to which opinions are apt to differ: see *R. v. De Ruiter* (1880), 44 J. P. 90; *Bonner v. Lushington, Castro v. Lushington* (1893), 57 J. P. 168; 68 L. T. 91; 37 Digest 361, 1631. The fourth offence is that of indecent behaviour. Under the present law an indictment will lie although the *locus* is not, strictly speaking, a public place (see *R. v. Wellard* (1884), 14 Q. B. D. 63; 49 J. P. 296; 15 Digest 746, 8051); and there is a summary penalty under the Vagrancy Act where the offence is committed with intent to insult any female in (*inter alia*) any place of public resort. The fifth offence deals with the exhibition of indecent matter, which is already punishable in a "public place" under the Vagrancy Act, 1824 (12 Halsbury's Statutes 913), and with the use of profane or obscene language, for which (except under byelaws) there is no summary penalty where the *locus* is not a street within the meaning of the Town Police Clauses Act, 1847, *ante*, p. 4222. Lastly, there are two offences dealing with the discharge of firearms, catapults, etc., the lighting of bonfires, and the deposit of rubbish. It will still be necessary in these cases to prove obstruction, annoyance, or danger to residents or inhabitants; but, *semble*, it is not necessary to call persons who have been actually annoyed, etc.; see notes to s. 28 of the Act of 1847, *ante*, p. 4226.

"Public
place," etc.

It may be useful here to give a reference to cases in which the courts have construed such expressions as "public place," "place of public resort," "place to which the public have access," etc., under different statutes: *Langrish v. Archer* (1882), 10 Q. B. D. 44; 47 J. P. 295; 25 Digest 433, 312 (railway carriage); *Re Freestone* (1856), 1 H. & N. 93; 20 J. P. 376; 25 Digest 433, 311 (railway carriage); *Re Davis* (1857), 2 H. & N. 149; 21 J. P. 280; 37 Digest 364, 1655, and *Woods v. Lindsay*, [1910] S. C. (J.) 88; 25 Digest 435, *q* (railway platforms); *Walker v. Reid*, [1911] S. C. (J.) 41 (railway mineral depot); *Case v. Storey* (1868), L. R. 4 Ex. 319; 33 J. P. 470; 42 Digest 859, 120 (railway station); *Campbell v. Kerr*, [1912] S. C. (J.) 10; 25 Digest 439, *o* (shed or quay); *Sewell v. Taylor* (1859), 7 C. B. (N. S.) 160; 23 J. P. 792; 37 Digest 364, 1656 (auction in private house); *Cole v. Coulton* (1860), 2 E. & E. 695; 24 J. P. 596; 30 Digest 93, 715 (alehouse); *M'Intyre v. Morton* (1912), 49 Sc. L. R. 781 (public rooms of hotel); *Russon v. Dutton* (1911), 75 J. P. 209; 104 L. T. 601; 38 Digest 166, 114 (public house); *Airton v. Scott* (1909), 73 J. P. 148; 100 L. T. 393; 25 Digest 436, 334, and *Turnball v. Appleton* (1881), 45 J. P. 469; 25 Digest 433, 315 (athletic and recreation grounds); *Breslin v. Thompson*, [1910] S. C. (J.) 5; 25 Digest 439, *n* (vacant building sites); *Long v. Walker*, [1910] S. C. (J.) 41; 25 Digest 438, *h* (semi-private passage); *Kison v. Ashe*, [1899] 1 Q. B. 425; 63 J. P. 325; 25 Digest 436, 331 (private land open but not enclosed). As to public vehicles in or passing along a street, see *Re Freestone, supra*; *R. v. Holmes* (1853), 3 Car. & Kir. 360; 17 J. P. 390; 15 Digest 746, 8047; *R. v. Weller* (1894), 58 J. P. 286; *Martin v. M'Intyre* (1910), 47 Sc. L. R. 645.

82. The local authority for the prevention of danger, obstruction, or annoyance to persons using the seashore may make and enforce byelaws to— **Section 82.**
Byelaws as to seashore.

- (1) Regulate the erection or placing on the seashore, or on such part or parts thereof as may be prescribed by such byelaws, of any booths, tents, sheds, stands, and stalls (whether fixed or movable), or vehicles for the sale or exposure of any article or thing, or any shows, exhibitions, performances, swings, roundabouts, or other erections, vans, photographic carts, or other vehicles, whether drawn or propelled by animals, persons or any mechanical power, and the playing of any games on the seashore, and generally regulates the user of the seashore for such purposes as shall be prescribed by such byelaws :
- (2) Regulate the user of the seashore for riding and driving ;
- (3) Regulate the selling and hawking of any article, commodity, or thing on the seashore ;
- (4) Provide for the preservation of order and good conduct among persons using the seashore. Provided that no byelaws affecting the foreshore below high-water mark shall come into operation until the consent of the Board of Trade has been obtained.

This section was repealed by the P. H. A., 1936, s. 346, Sched. III., Pt. III., *ante*, pp. 720, 729, so far as regards matters with respect to which byelaws can be made under Part VIII. of that Act, *ante*, p. 488. Even in so far as unrepealed, the section only becomes operative in a district when applied to it by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 5037—8. Byelaws made under it must be submitted to him for confirmation : see s. 9, *ante*, p. 5040.

See notes to the P. H. A., 1875, s. 164, *ante*, p. 4451, for cases in which byelaws as to the seashore have been considered by the courts.

As to the rating of a foreshore used for kiosks, etc., see *Yorkshire (North Riding) County Valuation Committee v. Redcar Corporation*, *ante*, p. 5055.

83. The local authority may, for the prevention of danger, obstruction, or annoyance to persons using the esplanades or promenades within the district, make byelaws prescribing the nature of the traffic for which they may be used, regulating the selling and hawking of any article, commodity, or thing thereon, and for the preservation of order and good conduct among the persons using the same. Byelaws as to promenades.

[This section only becomes operative in a district when applied to it by an Order of the Home Secretary. See s. 3 (1), (4), *ante*, pp. 5037, 5038. Byelaws under it must be submitted to him for confirmation : see s. 9, *ante*, p. 5040.]

See as to byelaws upon such matters cases cited in notes to the P. H. A., 1875, s. 164, *at ante*, p. 4451.

As regards an authority's power over a parade provided by them under a local Act, reference may be made to *Att.-Gen. v. Blackpool Corporation* (1907), 71 J. P. 478 ; 26 Digest 426, 1452, in which the authority were held to be in the position of trustees of the parade for limited public purposes. By their local Act of 1865, the corporation were authorised to make and maintain a carriage-drive and a promenade (called " the parade ") by the sea. It was provided by s. 13 that the carriage-drive should be a public highway, by s. 17 that the parade should not be a public highway, and by s. 18 that it should be " kept and used exclusively for the purposes of recreation by persons on foot, and with or without carriages, in respect of which toll is authorised to be taken." Section 19 authorised a toll of 'twopence for every bath-chair, etc. or like carriage driven by human power. By a later Act of 1899, additional works were authorised, including a new carriageway, absorbing the original parade, a new road with a tramway thereon alongside the new carriageway, and a new parade

**Note to
Section 83.**

alongside the tramway. By s. 7 the corporation might appropriate the whole or such part of the new parade as they might think fit for the exclusive use of foot passengers, and by s. 8 the new road was to be for the exclusive purpose of the tramway. The parade was, in fact, used exclusively for foot passengers and bath-chairs, etc. The corporation, in 1906, gave their approval to motor car races being held on the parade and gave permission for part of the tramway road to be used for the purpose of cars returning to the starting point. They also undertook to keep the portion of the parade over which the races were to be run clear of traffic, and to erect a barrier and provide the necessary police control. An action was brought by the Attorney-General, at the relation of a ratepayer, to restrain the corporation from organising or promoting motor races on the sea front. It was held by the Vice-Chancellor of the Palatine Court that the corporation were in the position of trustees of the parade for limited public purposes, namely, for the purpose of use by foot passengers perambulators, invalid carriages, and similar vehicles, and that it was an abuse of the parade to allow it to be used for either horses or motor cars, and *a fortiori* motor races.

**Licences to
porters.**

84.—(1) The local authority may from time to time grant to any person whom they think fit a licence to carry on the calling of a luggage porter, light porter, public messenger, or commissionaire, and may charge a fee of one shilling for any such licence.

(2) The local authority may from time to time make byelaws for regulating the conduct of any persons so licensed and for fixing the charges to be made by them.

(3) Every such licence may be granted for a year or for any less period according as the local authority may think fit, and may be suspended or revoked or endorsed by the local authority for a breach of such byelaws or whenever they shall deem such suspension or revocation or endorsement to be necessary or desirable in the interests of the public: Provided that the existence of this power to suspend or revoke or endorse a licence shall be plainly set forth in the licence itself.

(4) Every such licence whensoever issued shall expire on the thirty-first day of March next following the date of its issue, and may contain conditions as to the badge which the holder of any licence shall wear.

(5) If any person while unlicensed represents himself to be licensed, or wears any badge for the purpose of representing himself as licensed to carry on any of the callings specified in this section, he shall be liable to a penalty not exceeding twenty shillings.

This section only becomes operative in a district when applied to it by an Order of the Home Secretary (see s. 3 (1), (4), *ante*, pp. 5037, 5038). Byelaws under it require confirmation by him (see s. 9, *ante*, p. 5040).

There is nothing in the section to compel the persons referred to therein to take out a licence, and so long as they refrain from doing so, they will be under no obligation to observe any byelaws made by the authority.

**Registries
for servants.**

85.—(1) Every person who shall carry on, for the purpose of private gain, the trade or business of keeper of a female domestic servants' registry shall register his name and place of abode, and also the premises in which such trade or business is carried on, in a book to be kept at the offices of the local authority for the purpose.

(2) The local authority may make byelaws prescribing the books to be kept and the entries to be made therein, and any other matter which the local authority may deem necessary for the prevention of fraud or immorality in the conduct of such trade or business, and for regulating any premises used for the purposes of or in connection with such trade or business.

(3) The person registered shall keep a copy of the byelaws made by the local authority under this section hung up in a conspicuous place in the registered premises.

(4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall at all reasonable times be afforded by the person registered full and free power of entry into the registered premises for the purpose of inspecting the registered premises and the books required to be kept by such person.

(5) Any person carrying on such trade or business as aforesaid whose name, place of abode, and premises in which such trade or business is carried on have not been registered in accordance with sub-section one of this section, or whose registration has been cancelled or suspended as hereinafter provided, or acting in contravention of any of the provisions of this section or of any byelaw made thereunder, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings, and the court may (in lieu of or in addition to imposing a penalty) order the suspension or cancellation of the registration.

(6) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills and otherwise in such manner as they think sufficient.

This section only becomes operative in a district to which it is applied by an Order of the Home Secretary: see s. 3 (1), (4), *ante*, pp. 5037, 5038.

Sub-s. (6) imposes on an authority to whose district the section is applied the duty of giving public notice of its provisions; but it is submitted that neglect on the part of the authority to perform this duty will not excuse a keeper of a registry for breach of the provisions (see *Duncan v. Knill* (1907), 71 J. P. 287; 96 L. T. 911; 2 Digest 283, 560).

86.—(1) Every person who shall carry on business as a dealer in old metal or as a marine store dealer shall register his name and place of abode and every place of business, warehouse, store, and place of deposit occupied or used by him for the purpose of such business, in a book to be kept for the purpose at the offices of the local authority.

As to dealers in old metal and marine stores.

(2) Every person carrying on business as aforesaid shall correctly enter in a book to be kept by him for that purpose the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom the same were purchased or otherwise acquired.

(3) Every person who shall carry on such business without having so registered or without keeping such book and making such entries as required by this section shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding forty shillings.

(4) Any officer of the local authority or other person duly authorised in writing in that behalf by the local authority, and if so required exhibiting his authority, shall have free access at all reasonable times to every such place of business, warehouse, store, and place of deposit, to inspect the same and the books by this section required to be kept, and every person who shall prevent, hinder, or obstruct any officer or person

Section 86. so authorised in the execution of his duty under this sub-section shall be liable to a penalty not exceeding five pounds.

(5) The local authority shall give public notice of the provisions of this section by advertisement in two newspapers circulating in the district and by handbills and otherwise in such manner as they think sufficient.

This section only becomes operative in a district when applied to it by an Order of the Home Secretary : see s. 3 (1), (4), *ante*, pp. 5037, 5038.

By the Old Metal Dealers Act, 1861, s. 3 (4 Halsbury's Statutes 624), "In the construction and for the purposes of this Act the term 'dealer in old metals' shall mean any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores ; and the term 'old metals' shall mean the said articles." See the provisions of that Act generally as to dealers in old metals, and also the Prevention of Crimes Act, 1871, s. 13 (*op. cit.* 676).

As to "marine store dealers," *i.e.*, persons dealing in, buying or selling, anchors, cables, sails, old junk, old iron or other marine stores of any kind, see ss. 538—541 of the Merchant Shipping Act, 1894.

As to the prohibition of purchases from children under sixteen, see Merchant Shipping Act, 1894, s. 540, and Children Act, 1908, s. 116 (*op. cit.* 767).

In Ireland under a somewhat similar section, requiring licensing instead of registration, it has been held that the dealer must enter the vendor's *real* name, etc. and cannot protect himself by proving that he entered in good faith the name, etc. given to him (*Toppin v. Marcus*, [1908] 2 I. R. 423 ; 14 Digest 37, g) ; and also that a licensed dealer may purchase old metal through an unlicensed agent even off his licensed premises, but must be responsible for proper and accurate entries being made in his books (*Dunne v. Lee*, [1913] 1 I. R. 205 ; 1 Digest 274, n). See also as to who is a "general dealer" under the Irish Act, *Kelly v. Rice*, [1906] 2 I. R. 1 ; *Gamble v. Rainey* (1912), 46 Ir. L. T. 200, and as to what amounts to "using" a place for business, *Hall v. O'Brien* (1905), 40 Ir. L. T. 33.

Sub-s. (5) of the text imposes on an authority to whose district the section is applied the duty of giving public notice of its provisions ; but it is submitted that neglect on the part of the authority to perform this duty will not excuse a dealer for breach of its provisions (see *Duncan v. Knill*, *ante*, p. 5061).

* * * * *

PART IX.

SKY SIGNS.

Sky signs.

91.—(1) (a) It shall not be lawful to erect or fix to, upon, or in connection with any building or erection any sky sign, and it shall not be lawful to retain any existing sky sign so erected or fixed for a longer period than three years after the commencement of this section, nor during that period except with the licence of the local authority, and in the event of such licence being granted then only for such period not exceeding three years from the commencement of this section and under and subject to such terms and conditions as shall be therein prescribed.

Outside London there had hitherto been no power to control or prevent the erection of sky signs except under local Acts. Such power can now be obtained by means of an Order of the Home Secretary applying s. 91 to the district. See s. 3 (1), (4), *ante*,

(b) Provided that in any of the following cases a licence of the local authority under this sub-section shall become void (namely); Section 91.

- (i) If any addition to any sky sign be made except for the purpose of making it secure under the direction of the surveyor;
- (ii) If any change be made in the sky sign or any part thereof;
- (iii) If the sky sign or any part thereof fall either through accident decay, or any other cause;
- (iv) If any addition or alteration be made to or in the house, building, or structure on, over, or to which any sky sign is placed or attached if such addition or alteration involves the disturbance of the sky sign or any part thereof; or
- (v) If the house, building, or structure over, on, or to which the sky sign is placed or attached become unoccupied or be demolished or destroyed.

(c) Provided also that if any sky sign be erected or retained contrary to the provisions of this Act, or after the licence for the erection, maintenance, or retention thereof for any period shall have expired or become void, it shall be lawful for the local authority to take proceedings for the taking down and removal of the sky sign in the same manner and with the same consequence as to recovery of expenses and otherwise in all respects as if it were an obstruction within the meaning of section sixty-nine (Future projections of houses, etc., to be removed on notice) of the Towns Improvement Clauses Act, 1847.

See this section, *ante*, p. 4204.

(2) Any person acting in contravention of any of the provisions of this section, or of the terms and conditions (if any) of any approval, licence, or consent under this section, shall be liable to a penalty not exceeding five pounds and to a daily penalty not exceeding twenty shillings.

(3) For the purposes of this section—

“Sky sign” means—

Any word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction supported on or attached to any post, pole, standard, frame-work, or other support wholly or in part upon, over, or above any house, building or structure which, or any part of which, sky sign shall be visible against the sky from some point in any street or public way, and includes all and every part of any such post, pole, standard, frame-work, or other support;

The expression “sky sign” shall also include—

Any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any house, building, structure, or erection of any kind, or on or over any street or public way;

But shall not include—

(a) Any flagstaff, pole, vane, or weathercock unless adapted or used wholly or in part for the purpose of any advertisement or announcement;

Section 91.

(b) Any sign or any board, frame, or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof : Provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall or parapet or ridge to, against or on which it is fixed or supported ;

(c) Any word, letter, model, sign, device, or representation as aforesaid relating exclusively to the business of a railway or canal company, and placed wholly upon or over any railway, canal, railway station, wharf, quay, yard, platform, or station or wharf or quay approach belonging to a railway or canal company, and so placed that it cannot fall into any street or public place.

The above definition is similar to that contained in the London Building Act, 1930, s. 5 (23 Halsbury's Statutes 219) ; see *R. v. Vaughan, Ex parte London C. C.* (1896), 12 T. L. R. 193, and *London C. C. v. Savoy Hotel Co.* (1896), 60 J. P. 457 ; 38 Digest 179, 207, in which the corresponding section of the L. B. Act, 1894, was construed. See also *London C. C. v. Carwardine* (1892), 57 J. P. 181 ; 62 L. J. M. C. 40 ; 38 Digest 179, 205, and *Tussaud v. London C. C.* (1892), 57 J. P. 184 ; 9 T. L. R. 64 ; 38 Digest 179, 206, decided under the London Sky Signs Act, 1891, which also contained a different definition ; and *Goldstraw v. Jones* (1906), 71 J. P. 22 ; 96 L. T. 30 ; 26 Digest 565, 2595, a decision under a local Act as to "a sign."

Cf. cases on what are "hoardings" for purposes of the Advertisements Regulation Act, 1907, s. 2, *ante*, p. 5032.

PART X.

MISCELLANEOUS.

* * * * *

Power to
licence
pleasure
boats.

94 (a).—(1) The local authority may grant upon such terms and conditions as they may think fit licences for pleasure boats and pleasure vessels to be let for hire or to be used for carrying passengers for hire, and to the boatmen or persons assisting in the charge or navigation of such boats and vessels, and may charge annual fees for such licences, for a boat or vessel a fee not exceeding the sum of five shillings, and for a boatman or other person a fee not exceeding the sum of one shilling.

(2) Any such licence may be granted for such period as the local authority may think fit, and may be suspended or revoked by the local authority whenever they shall deem such suspension or revocation to be necessary or desirable in the interests of the public : Provided that the existence of the power to suspend or revoke the licence shall be plainly set forth in the licence itself.

(3) No person shall let for hire any pleasure boat or pleasure vessel not so licensed or at any time during the suspension of the licence for the boat or vessel, nor shall any person carry or permit to be carried passengers for hire in any pleasure boat or vessel not so licensed or at any time during the suspension of the licence for the boat or vessel.

(4) A licence under this section shall not be required for any boat or vessel duly licensed by or under any regulations of the Board of Trade (b).

Section 94.

(5) No person shall carry or permit to be carried in any pleasure boat or pleasure vessel a greater number of passengers for hire than shall be specified in the licence applying to such boat or vessel, and every owner of any such boat or vessel shall, before permitting the same to be used for carrying passengers for hire, paint or cause to be painted, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the said boat or vessel, his own name and also the number of persons which it is licensed to carry, in the form "Licensed to carry persons."

(6) Every person who shall act in contravention of the provisions of this section shall for each offence be liable to a penalty not exceeding forty shillings.

(7) Any person deeming himself aggrieved by the withholding, suspension, or revocation of any licence under the provisions of this section may appeal to a petty sessional court held after the expiration of two clear days after such withholding, suspension, or revocation: Provided that the person so aggrieved shall give twenty-four hours' written notice of such appeal, and the ground thereof, to the clerk, and the court shall have power to make such order as they see fit and to award costs, such costs to be recoverable summarily as a civil debt (c).

(a) This section only becomes operative in a district when applied to it by an Order of the Minister of Health: see s. 3, *ante*, p. 5037. An authority applying for such an Order will probably be required to state to what extent pleasure boats are hired in the district, and whether there are any byelaws in force with regard to pleasure boats.

When the section has been applied it will extend the provisions of the P. H. A., 1875, s. 172, *ante*, p. 4460.

The defendant, who resided outside a district in which this section was in force, brought his boat to the beach within it and then landed and touted for passengers. Certain persons got into his boat. It was held that there was evidence that he was plying for hire; and that, although no express evidence was given as to whether the boundary of the district extended below high-water mark, the magistrates were justified in convicting (*Fearon v. Warrenpoint U. D. C.* (1910), 44 I. L. T. 265); see, however, as to England the note to "parish" on p. 692, *ante*.

(b) Although vessels licensed (or more properly certificated) by the Board of Trade under the Merchant Shipping Acts are excepted from the requirements of a licence under this section, byelaws made under s. 172 of the P. H. A., 1875, *ante*, p. 4460, can apparently apply to them if, in fact, they are also "pleasure boats."

(c) See as to this expression, the note on p. 1079, *ante*.

95. The powers of a local authority under sections one hundred and seventy-five and one hundred and seventy-six of the Public Health Act, 1875, shall extend to highway purposes (a) . . . (b).

(a) S. 175 (13 Halsbury's Statutes 699) enabled the local authority to acquire lands by agreement, and s. 176 (*op. cit.* 700) by compulsory procedure.

(b) The rest of this section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1288.

The references are now to Part VII. of the L. G. A., 1933, *ante*, p. 973, by virtue of *ibid.*, s. 307 (3), *ante*, p. 1195.

Extension
and amend-
ment of
s. 175 and
s. 176 of
38 & 39 Vict,
c. 55.

Section 6.

THE FINANCE ACT, 1908.

(8 EDW. 7, c. 16.)

An Act to grant certain duties of Customs and Inland Revenue, to alter other duties, and to amend the Law relating to Customs and Inland Revenue and the National Debt, and to make other provisions for the Financial Arrangements of the year. [1st August, 1908.]

* * * * *

PART III.

LOCAL TAXATION LICENCES.

Collection of
duties on
certain local
taxation
licences by
county
councils.

6.—(1) The power to levy the duties on local taxation licences to which this section applies shall, as from the date to be fixed by Order in Council, under this section, be transferred (a) in England and Wales to county councils, and section seventeen of the Finance Act, 1907, shall, as from the date of the transfer, cease to apply to or in respect of any such duties or the proceeds thereof.

(2) His Majesty may, by Order in Council, fix the date of the transfer under this section, and make any such further provisions as it appears necessary or expedient to make in order to give full effect to the transfer, and may make provision for the furnishing by county councils of returns to the Local Government Board (c) as to the amounts levied under the power transferred by this section.

The transfer under this section shall not affect any equitable adjustment respecting the distribution of the proceeds of the local taxation licences made under the Local Government Act, 1888, or otherwise, but provision may be made by Order in Council under this section for any alteration which it appears necessary or expedient to make in consequence of the transfer in the procedure for making any payments, or otherwise giving effect to any such adjustment.

Sub-sections (3) (4) and (5) of section twenty of the Local Government Act, 1888, and any other provisions of that Act relating to the levy of the duties on local taxation licences by county councils shall, as respects the duties to which this section applies, have effect as if the power to levy those duties had been transferred under subsection (3) of section twenty of that Act.

(3) *When the transfer under this section takes effect there shall be charged on and paid annually out of the Consolidated Fund or the growing produce thereof to the Local Taxation Account a sum of forty thousand pounds, and the sum so paid shall be distributed amongst the county councils in England and Wales in proportion to the proceeds of the duties to which this section applies collected in each county during the preceding year (d).*

(4) The duties on local taxation licences to which this section applies are the duties on licences to deal in game, licences for dogs, killing game, guns, carriages (including duties charged under subsection (1) of section eight of the Locomotives on Highways Act, 1896) (e), armorial bearings . . . (f).

Provided that if the rate of any such duty is altered, that duty shall, unless Parliament makes provision to the contrary, cease to be a duty to which this section applies (g).

(5) The expressions "county" and "county council" in this section respectively include a county borough and the council of a county borough.

(a) The transfer contemplated by this section was effectuated by an Order in Council, dated October 19th, 1908. See the Order, a Circular of the L. G. B., and a memorandum of the Inland Revenue Commissioners at 6 L. G. R., Part III., pp. 169 *et seq.* No officer

of the local authority can take proceedings for the recovery of a fine under any Act relating to inland revenue without an order from the local authority directing him to take proceedings in the particular case, and a general direction to take proceedings in such cases is sufficient (*Jones v. Wilson*, [1918] 2 K. B. 36; 82 J. P. 277; 33 Digest 95, 643).

(c) Now the M. of H.

(d) This subsection was repealed by the L. G. A., 1929, Sched. XII., Pt. VI., Vol. V. and 10 Halsbury's Statutes 1018. The amount formerly payable under this subsection as amended by s. 62 of the Finance Act, 1921, is among the grants discontinued by s. 85 and Sched. II. of the 1929 Act, Vol. V. and 10 Halsbury's Statutes 937, 979. As to the new grants substituted for those discontinued, see Pt. VI. of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 937, and the M. of H. Circular, L. G. A., 17.

(f) The words "and male servants," which were formerly inserted here, were repealed by the Finance Act, 1937 (30 Halsbury's Statutes 195, 349, 742).

(g) See hereon the Roads Act, 1920, Vol. V. and 19 Halsbury's Statutes 85.

THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908.

(8 Edw. 7, c. 36.)

An Act to consolidate the Enactments with respect to Small Holdings and Allotments in England and Wales. [1st August 1908.]

The Act has been amended by the Land Settlement (Facilities) Act, 1919, the Allotments Act, 1922, the Allotments Act, 1925, the Small Holdings and Allotments Act, 1926, and the Agricultural Land (Utilisation) Act, 1941. All these Acts are set out in Vol. V., *post*. See also the Agriculture Act, 1920 (1 Halsbury's Statutes 76). The necessity for providing allotments must be considered by every local authority or joint committee preparing a Town Planning Scheme, and every borough and urban district council any part of whose district is comprised in the area of a town planning scheme must take into consideration at least once a year the question of the adequacy of the allotments within the area of the scheme (s. 3 of the 1925 Act, Vol. V., *post*). See also the obligations imposed by s. 23 of the Act in the text.

This Act re-enacted without substantial variation the group of statutes which it repealed, see Schedule III., *post*, p. 5092.

PART I.

SMALL HOLDINGS.

* * * * *

This part of the Act was repealed by s. 22 and Sched. II. of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 333, 335. See now Part I. of that Act.

PART II.

ALLOTMENTS.

PROVISION OF ALLOTMENTS.

23.—(1) If the council of any borough, urban district, or parish (a) are of opinion that there is a demand for allotments for the labouring population (b) in the borough, urban district, or parish, and that such allotments cannot be obtained at a reasonable rent and on reasonable conditions by voluntary arrangement between the owners of land suitable for such allotments and the applicants for the same (b), the council shall (c) provide a sufficient number of allotments, and shall let such allotments to persons (d) belonging to the labouring population (b) resident in the borough, district, or parish, and desiring to take the same

Duty of certain councils to provide allotments.

(2) On a representation in writing to the council of any borough, urban district, or parish, by any six registered parliamentary electors or ratepayers resident in the borough, urban district, or parish, that the circumstances of the borough, urban district, or parish are such that it is the duty of the council

Section 23. to take proceedings under this Part of this Act therein, the council shall take such representation into consideration.

(3) . . . (e).

(4) The duty of a council to provide allotments under this Act shall not include the duty of providing allotments exceeding one acre in extent (f).

(a) In a rural parish having no parish council, the parish meeting has the same powers (s. 61 (4), *post*, p. 5087). Prior to 1907, the district council was in a rural parish the authority for executing the Allotments Acts. The Small Holdings and Allotments Act, 1907, transferred the powers and duties to parish councils and meetings, and made provision for the necessary transfer and adjustment of property and liabilities (s. 20 (2), (3), (6)).

Every local authority having powers under the Small Holdings and Allotments Acts, 1908—1931, has power to act as agent for the Special Commissioner for England and Wales under the Special Areas (Development and Improvement) Act, 1934, s. 5 (2) (27 Halsbury's Statutes 830).

(b) The words italicised were repealed by s. 25 and Second and Third Schedules to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3.

(c) "Shall" provide, but see s. 16 of the Act of 1922, Vol. V., *post*, as amended by s. 4 of the Act of 1925, Vol. V., *post*, as to financial considerations.

(d) Under s. 28, *post*, p. 5071, the council may make rules as to persons eligible to be tenants of allotments. Apparently a person accepted as tenant must at the time be resident within the area, but may retain his allotment if he subsequently removes to a place not more than one mile outside the area (s. 30 (2), *post*, p. 5072).

The Minister has power to provide allotments, not exceeding one acre, for unemployed persons and allotment gardens for persons who are not in full-time employment, under the Agricultural Land (Utilisation) Act, 1931, s. 13; Vol. V., *post*.

(e) This sub-section, which defined "reasonable rent," was repealed by s. 25 and Second and Third Schedules to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3.

(f) A holding exceeding one acre is within the term "small holding" (s. 61, *post*, p. 5086). As to such the council have no duty (unless they have agreed to a delegation of powers by the county council under s. 9 of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 328, and may refer applicants to the county council; nevertheless they may provide allotments up to five acres (see s. 27 (3), *post*, p. 5070). By s. 13 of the Allotments Act, 1922, Vol. V. *post*, the obligation of urban authorities, where the population of their districts is 10,000 or upwards, is limited to the provision of allotment gardens not exceeding 20 poles in extent.

Duty of county councils to act in default of district and parish councils.

24.—(1) It shall be the duty of a county council to ascertain the extent to which there is a demand for allotments [by any person or by an association to which allotments may be let under this Act] (a) in the several urban districts (*other than boroughs*) (b) and rural parishes in the county, or would be a demand if suitable land were available, and the extent to which it is reasonably practicable, having regard to the provisions of this Act, to satisfy any such demand, and for that purpose to co-operate with such authorities, associations, and persons as they think best qualified to assist them, and take such other steps as they think necessary.

(2) The county council, if satisfied that the circumstances are such that land for allotments should be acquired by them under this section, shall pass a resolution to that effect, and thereupon the powers and duties of the district or parish council under the provisions of this Act relating to allotments shall be transferred from that council to the county council, and the county council, in substitution for that council, shall proceed to acquire land in accordance with this Act, and otherwise execute this Act in the district or parish :

Provided that this section shall not affect the property in, or any powers or duties of the district or parish council in relation to, any land which, before the passing of the resolution, was acquired by the district or parish council under this Act, or any enactment repealed by this Act.

(3) Where the powers of the district or parish council are, by virtue of this section, transferred to the county council, the following provisions shall have effect :—

- (a) The provisions of this Act relating to allotments shall apply with the modifications necessary for giving effect to this section : Section 24.
- (b) The county council may borrow for the purposes of those provisions subject to the conditions, in the manner, and on the security of the rate, subject to, in, and on the security of which the district or parish council might have borrowed under those provisions (c). The council shall have power to charge the said rate with the repayment of the principal and interest of the loan, and the loan with the interest thereon shall be repaid by the district or parish council in like manner, and the charge shall have the like effect, as if the loan were lawfully raised and charged on that rate by the district or parish council :
- (c) The county council shall keep separate accounts of all receipts and expenditure under this section :
- (d) All sums received by the county council in respect of any land acquired under this section or the corresponding provision of any enactment repealed by this Act (d), otherwise than from any sale or exchange (e), in so far as they are not required for the payment of expenses incurred by them in respect of such land, shall be paid to the district or parish council :
- (e) The county council may delegate to the district or parish council any powers under this Act relating to the management of the allotments, and the letting and use thereof, and the recovery of the rent and of possession thereof ; and, subject to the terms of the delegation, all expenses and receipts arising in the exercise of the powers so delegated shall be paid and dealt with as expenses and receipts of the district or parish council under this Act :
- (f) The county council, on the request of the district or parish council, may, by order under their seal, transfer to that council all or any of the powers, duties, property, and liabilities vested in and imposed on the council by virtue of this section or the corresponding provision of any enactment repealed by this Act, as regards the district or parish, and the property so transferred shall be deemed to have been acquired by that council under this Act, and that council shall act accordingly.
- (4) If the Board (f) are, in relation to any urban district (*other than a borough*) (b) or rural parish, satisfied, after holding a local inquiry at which the county council and the council of the district or parish and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard, that the county council have failed to fulfil their obligations under this section, the Board may by order transfer to [such officers of the Ministry of Agriculture and Fisheries as the Minister may appoint for the purpose] (g) all or any of the powers of the county council under this section in relation to the district or parish, and this section shall apply as if references to [such officers] (g) were substituted for references to the county council and with such other adaptations as may be made by the order (h).

(a) The words in brackets were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3. As to the associations to which allotments may be let, see s. 27 (6), *post*, p. 5071.

(b) The words italicised were repealed by s. 25 and Second and Third Schedules of the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3.

(c) As to the borrowing powers of district and parish councils, see L. G. A., 1933, Pt. IX., *ante*, p. 1023.

(d) *E.g.*, ss. 2, 4 of the repealed Allotments Act, 1890.

(e) As to proceeds of sales and exchanges, see s. 32 (2), *post*, p. 5073.

**Note to
Section 24.**

(f) *I.e.*, formerly the Board of Agriculture and Fisheries, but now the Minister of Agriculture and Fisheries. As to local inquiries by the Minister, see s. 57, *post*, p. 5085.

(g) The words in brackets are substituted for "the Commissioners" (*i.e.*, the Small Holdings Commissioners) in consequence of s. 22 (2) of the Small Holdings and Allotments Act, 1926, Vol. V., *post*.

(h) See as to action in default of the London County Council or of county borough or Metropolitan borough councils, s. 20 of the Allotments Act, 1922, Vol. V., *post*.

POWERS OF COUNCILS IN RELATION TO THE PROVISION OF ALLOTMENTS.

Reference should be made to s. 21 of the Land Settlement (Facilities) Act, 1919, *post*, p. 5225, for further powers conferred upon councils in relation to allotments. See also the same section as to relief from stamp duty of leases or agreements for letting of allotments when the rent does not exceed 10s., and no premium is paid. See also s. 19 of the Allotments Act, 1922, Vol. V., *post*, as to the penalty imposed for damage to an allotment garden.

Acquisition of
land for pur-
poses of Act.

25.—(1) The council of a borough, urban district, or parish may, for the purpose of providing allotments, by agreement purchase or take on lease land, whether situate within or without their borough, district, or parish (a).

(2) If a council are unable to acquire by agreement, and on reasonable terms, suitable land for the purpose of allotments, they may acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land (b).

(3) . . . (c).

(a) Though it is not required that the land should be actually in the parish, etc., it must obviously be close at hand. As to Crown lands, glebe land, and persons having limited powers of sale or leasing, see s. 40, *post*. And see the sections referred to in the note to Part III., *post*, p. 5075.

As to recording the purchase price paid and its gross value for rating purposes, see s. 13 of the Allotments Act, 1925, Vol. V., *post*. Under s. 5, *ibid.*, Vol. V., *post*, land may be acquired in anticipation of its requirement for use as allotments.

(b) See Part III., *post*, p. 5075, and *Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559; 42 Digest 5, 17.

(c) Sub-section (3) was repealed by s. 23 and Schedule to Allotments Act, 1922, Vol. V., *post*. See now s. 16 of that Act, Vol. V. and 1 Halsbury's Statutes 320, as amended by s. 4 of the Allotments Act, 1925.

Improvement
and adaptation
of land for
allotments.

26.—(1) The council of a borough, urban district, or parish may improve any land acquired by them for allotments and adapt the same for letting in allotments, by draining, fencing, and dividing the same, acquiring approaches, making roads and otherwise, as they think fit, and may from time to time do such things as may be necessary for maintaining such drains, approaches, and roads, or otherwise for maintaining the allotments in a proper condition.

(2) The council may also adapt the land for allotments by erecting buildings and making adaptations of existing buildings, but so that not more than one dwelling-house shall be erected for occupation with one allotment; and no dwelling-house shall be erected for occupation with any allotment of less than one acre.

Provisions as to
letting of allot-
ments.

27.—(1) . . .

(2) . . .

(3) One person shall not hold any allotment or allotments acquired under this Part of this Act, or any enactment hereby repealed, exceeding five acres :

Provided that any part of the land acquired by a council for the purposes of allotments which exceeds five acres may be adapted for letting and let as an allotment, if the county council are satisfied by the council that it is convenient and desirable that it should be so let and consent to such letting accordingly.

(4) An allotment shall not be sublet [except with the consent of the council] (a).

Section 27.

(5) If at any time an allotment cannot be let in accordance with the provisions of this Act and the rules made thereunder, the same may be let to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable possession thereof to be resumed within a period not exceeding twelve months if it should at any time be required to be let under the provisions aforesaid.

(6) A council shall have the same power of letting one or more allotments to persons working on a co-operative system or [of letting or selling] (a) to an association formed for the purposes of creating or promoting the creation of allotments as may be exercised as respects small holdings by a county council (b).

Sub-section (1) of s. 27 was repealed by s. 23 and Schedule to the Allotments Act, 1922, Vol. V., *post*. Sub-section (2) was repealed by the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3. See the provisions of s. 16 of the Allotments Act, 1922, Vol. V., *post*, as amended by s. 4 of the Allotments Act, 1925, Vol. V., *post*, enacted in substitution for the provisions of sub-section (1) in the text, and see the provisions of s. 17 of the Act of 1922, Vol. V., *post*, as amended by ss. 10 and 11 of the Act of 1925, Vol. V., *post*, enacted in substitution for the provisions of sub-section (2) in the text.

(a) The words in brackets in sub-ss. (4) and (6) were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3.

(b) By s. 3 of the Small Holdings and Allotments Act, 1926, Vol. V. and I Halsbury's Statutes 324, a county council have power to let one or more small holdings to a number of persons working on a co-operative system, provided such system be approved by the council; and, with the consent of the Minister, to let one or more small holdings to any association formed for the purposes of creating or promoting the creation of small holdings, and so constituted that the division of profits amongst the members of the association is prohibited or restricted.

28.—(1) Subject to the provisions of this Act, a borough, urban district, or parish council may make such rules as appear to be necessary or proper for regulating the letting of allotments under this Act, and for preventing any undue preference in the letting thereof, and generally for carrying the provisions of this Part of this Act into effect.

(2) Rules under this section may define the persons eligible (a) to be tenants of allotments, the notices to be given for the letting thereof, the size of the allotments, the conditions under which they are to be cultivated, and the rent to be paid for them.

(3) All such rules shall make provision for reasonable notice to be given to a tenant of any allotment of the determination of his tenancy (b).

Rules under this section shall not be of any force unless and until they have been confirmed by the Board (c) in like manner and subject to the like provisions as in the case of byelaws required to be confirmed by the Local Government Board under the Public Health Acts (d).

(4) Rules for the time being in force under this section shall be binding on all persons whatsoever; and the council shall cause them to be from time to time made known, in such manner as the council think fit, to all persons interested, and shall cause a copy thereof to be given gratis to any inhabitant of the district or parish demanding the same (e).

Model rules for the use of borough and urban district councils have been issued by the Minister of Agriculture and Fisheries: see *ante*, p. 3781.

(a) As to "persons eligible," see note (d) to s. 23, *ante*, p. 5068.

(b) See now the provisions of the Allotments Act, 1922, ss. 1 and 2, Vol. V., *post*, as to the determination of the tenancies of allotment gardens.

(c) *I.e.* the Board (now Minister) of Agriculture and Fisheries.

(d) The procedure was formerly under s. 184 of the P. H. A., 1875, *ante*, p. 4468; but by virtue of s. 250 (1) (c) of the L. G. A., 1933, *ante*, p. 1104, the provisions of that section are now substituted.

(e) Unless otherwise expressly provided, the rules apply to an allotment, though held under a tenancy made before the rules came into operation (s. 21 (3) of Land Settlement (Facilities) Act, 1919, *post*, p. 5225).

Rules as to
letting allot-
ments.

Section 29. **29.**—(1) The council of a borough, urban district, or parish may from time to time appoint, and, when appointed, remove allotment managers of land acquired by the council for allotments, and the allotment managers shall consist either partly of members of the council and partly of other persons, or wholly of other persons, so that in either case such other persons be persons residing in the locality and contributing to the rate (a) out of which the expenses of the council under this Act are paid.

Management of allotments.

(2) The proceedings and powers of allotment managers shall be such as, subject to the provisions of this Act, may be directed by the council; the allotment managers may be empowered by the council to do anything in relation to the management of the allotments which the council are authorised to do and to incur expenses to such amount as the council authorise, and any expenses properly so incurred shall be deemed to be expenses of the council under this Act.

See also the provisions of s. 14 of the Act of 1922, Vol. V., *post*, as amended by s. 12 of the Act of 1925, Vol. V., *post*, as to allotment committees.

(a) As to this rate, see s. 53, *post*, p. 5084, and notes thereto.

Recovery of rent and possession of allotments.

30.—(1) The rent for an allotment let by a council in pursuance of this Act, and the possession of such an allotment in the case of any notice to quit, or failure to deliver up possession thereof as required by law, may be recovered by the council as landlords, in the like manner as in any other case of landlord and tenant (a).

(2) If the rent for any allotment is in arrear for not less than forty days, or if it appears to the council that the tenant of an allotment not less than three months after the commencement of the tenancy thereof has not duly observed the rules affecting the allotment made by or in pursuance of this Act, or is resident more than one mile out of the borough, district, or parish for which the allotments are provided, the council may serve upon the tenant, or, if he is residing out of the borough, district or parish, leave at his last known place of abode in the borough, district, or parish, or fix in some conspicuous manner on the allotment, a written notice determining the tenancy at the expiration of one month after the notice has been so served or affixed, and thereupon the tenancy shall be determined accordingly :

. . . (b).

(3) Upon the recovery of an allotment from any tenant, the court directing the recovery may stay delivery of possession until payment of the compensation (if any) due to the outgoing tenant has been made or secured to the satisfaction of the court (c).

(a) Therefore the council may distrain for rent. Possession may be recovered under the Small Tenements Recovery Act, 1838 (10 Halsbury's Statutes 324).

(b) A proviso to this sub-section was repealed by s. 23 and Schedule to the Allotments Act, 1922, Vol. V. and 1 Halsbury's Statutes 317.

(c) As to the compensation payable upon the quitting of an allotment garden, see s. 2 of the Act of 1922, Vol. V. and 1 Halsbury's Statutes 304.

31. . . .

This section was repealed by s. 33 and Third Schedule to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5230, 5233. Section 32 (3) was repealed by the same Act.

Sale of superfluous or unsuitable land.

32.—(1) Where the council of any borough, urban district, or parish are of opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available, they may, with the sanction of the county council, sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.

(2) The proceeds of a sale under this Act of land acquired for allotments, and any money received by the council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by the council for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the [Minister of Health]; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable.

Section 32.

(3) . . .

Wide general powers of disposing of superfluous lands which a local authority does not require, are contained in L. G. A., 1933, ss. 165, 170, *ante*, pp. 993, 999.

By s. 8 of the Allotments Act, 1925, Vol. V., *post*, the sale, appropriation, use, or disposal of land acquired by a local authority for allotments is prohibited without the consent of the Minister of Agriculture and Fisheries after consultation with the Minister of Health and such consent is not to be given unless the Minister is satisfied that adequate provision of allotments exists. Where the consent of the Minister has been obtained the consent of the county council under this section is no longer required.

This section is excluded from application to land acquired by the Minister under the Agricultural Land (Utilisation) Act, 1931, for allotments not exceeding one acre for unemployed persons (see *ibid.*, s. 13, Vol. V. and 24 Halsbury's Statutes 59).

Sub-section (3) of this section was repealed by s. 33 and Sched. III., Land Settlement (Facilities) Act, 1919, *post*, pp. 5230, 5233.

33.—(1) The allotment wardens under the Inclosure Acts, 1845 to 1882, having the management of any land appropriated under those Acts either before or after the passing of this Act for allotments or field gardens for the labouring poor of any place, may, by agreement with the council of the borough, urban district, or parish, within whose borough, district, or parish that place is wholly or partly situate, transfer the management of that land to the council, upon such terms and conditions as may be agreed upon with the sanction, as regards the allotment wardens, of the Board (a), and thereupon the land shall vest in the council.

Transfer of allotments to borough, district, and parish councils.

(2) All trustees within the meaning of the Allotments Extension Act, 1882, required or authorised by that or any other Act to let lands in allotments to cottagers, labourers, journeymen, or others in any place, may, if they think fit, in lieu of letting the land in manner provided by the said Acts, sell or let the land to the council of the borough, urban district, or parish in which such place is wholly or partly situate, upon such terms as may be agreed upon, with the sanction, as regards the trustees, of the Charity Commissioners or the Board of Education, as the case may require.

(3) Where, as respects any rural parish, any Act constitutes any persons wardens of allotments, or authorises or requires the appointment or election of any wardens, committee, or managers for the purpose of allotments, the powers and duties of the wardens, committee, or managers shall, subject to the provisions of this Act, be exercised and performed by the parish council, or, in the case of a parish not having a parish council, by persons appointed by the parish meeting, and it shall not be necessary to make the said appointment or to hold the said election.

(4) The provisions of this Act relating to allotments shall apply to land vested in, or the management whereof has been transferred to, a council under this section or the corresponding provision of any enactment repealed by this Act in like manner as if the land had been acquired by the council under the general powers of this Part of this Act.

(a) Now the Minister of Agriculture and Fisheries

Section 34.

SUPPLEMENTAL.

Power to make scheme for provision of common pasture.

34.—(1) Where it appears to the council of any borough, urban district, or parish that, as regards their borough, district, or parish, land can be acquired for affording common pasture at such price or rent that all expenses incurred by the council in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the *labouring* (a) population, the council may submit to the council of the county in which the borough, district, or parish is wholly or partly situate a scheme for providing such common pasture.

(2) The county council, if satisfied of the expediency of such scheme, may by order authorise the council which submitted it to carry it into effect, and, upon such an order being made, the provisions of this Act relating to allotments shall, with the necessary modifications, apply in like manner as if "allotments" in those provisions included common pasture, and "rent" included a charge for turning out an animal:

Provided that the rules made under those provisions may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

See also s. 42, *post*, p. 5079.

(a) This word was repealed by s. 25 and Second and Third Schedules to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5232—3.

Use of school-room free of charge.

35.—(1) Any room in a public elementary school in respect of which a grant is made out of moneys provided by Parliament may, except while the room is being used for educational purposes, be used free of charge for the purposes of this Part of this Act by the county council, or, with the consent of any two managers, for the purpose of holding public meetings to discuss any question relating to allotments under this Act, but any damage done to the room and any expense incurred by the persons having control over the room on account of its being so used shall be paid by the county council or the persons calling the meeting.

(2) Nothing in this section shall give any right to hold a public meeting in a schoolroom—

(a) Unless not less than six days before the meeting a notice of the intention to hold the meeting on the day and at the time specified in the notice, signed by the persons calling the meeting, being not less than six in number, and being persons qualified to make a representation (a) to the council of a borough, urban district, or parish under this Part of this Act, has been given, in the case of a school provided by the local education authority to the clerk of that authority, and in any other case to one of the managers of the school; or

(b) if the use of the schoolroom on the said day and at the said time has previously to the receipt of the notice of the meeting been granted for some other purpose; but in that case the clerk or manager, or some one on his behalf, shall forthwith, after the receipt of the notice, inform in writing one of the persons signing it that the use of the school has been so granted for some other purpose, and name some other day on which the schoolroom can be used for the meeting.

(3) If the persons calling the meeting fail to obtain the use of the schoolroom under this section, they may appeal to the small holdings and allot-

ments committee under this Act (b), and the committee shall forthwith decide the appeal, and make such order respecting the use of the room as seems just. **Section 35.**

(4) . . . (c).

(a) *I.e.*, qualified to make a representation under s. 23 (2), *ante*, p. 5067.

(b) As to this committee, see s. 50, *post*, p. 5083.

(c) Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1288.

36. The powers as to allotments conferred on borough, urban district, and parish councils by this Act may in London be exercised by the London County Council, and the provisions of this Act as to allotments shall apply accordingly, except that, subject to the provisions of this Act, the expenses shall be defrayed and money borrowed under and in accordance with the provisions of the Local Government Act, 1888. Application to London.

37. Such of the provisions of this Part of this Act as require the sanction of, submission to, or order of, a county council shall not apply in the case of a county borough. Application to county boroughs.

PART III.

GENERAL.

ACQUISITION OF LAND.

See the power of appropriation of land given by s. 22 of the Land Settlement (Facilities) Act, 1919, *post*, p. 5225. And see the restriction as to appropriation of, or acquisition of, commons and open spaces contained in s. 28 of the same Act, *post*, p. 5229; the embargo placed by the same section upon the acquisition of land which forms part of the trust property to which the National Trust Act, 1907, applies. And see, also, the power of entry on unoccupied land given by s. 10 of the Allotments Act, 1922, Vol. V., *post*. See, further, the time limit for serving notice to treat imposed by s. 12 of the last-mentioned Act, Vol. V., *post*. Power to acquire land in anticipation of requirements is given by the Allotments Act, 1925, s. 5, Vol. V., *post*. See also *ibid.*, s. 8, as to the restrictions imposed on disposing of land acquired for allotments. Under s. 57 (2) of the Settled Land Act, 1925 (17 Halsbury's Statutes 894), a tenant for life may make a grant in fee simple or a lease for any term of years absolute of any part of the settled land for a nominal price or rent or for less than the best price for rent that can reasonably be obtained or gratuitously for the purposes of the Small Holdings and Allotments Acts. The area which can be so granted or leased in any parish must not exceed 2 acres in an urban district or 10 acres in a rural district.

38. For the purpose of the purchase of land by agreement under this Act by a council, the Lands Clauses Acts (a) shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement (b) and section one hundred and seventy-eight (c) of the Public Health Act, 1875, shall apply as if the council were referred to therein. Purchase of land by agreement.

(a) *I.e.* Lands Clauses Consolidation Act, 1845; Lands Clauses Consolidation Acts Amendment Act, 1860; Lands Clauses (Umpire) Act, 1883; Land Clauses (Taxation of Costs) Act, 1895. All these Acts are set out *ante*, pp. 4104, 4252, 4664, 4938.

(b) Excluding s. 82 of the 1845 Act, *ante*, p. 4134, as to the costs of conveyances (s. 17 (1) of the Small Holdings and Allotments Act, 1926, Vol. V., *post*).

(c) S. 178 of the P. H. A., 1875 (13 Halsbury's Statutes 702), was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. I., *ante*, pp. 1194, 1273, and this reference must now be read as one to *ibid.*, s. 178, *ante*, p. 1001. Since neither s. 307 nor Sched. XI. are in Part VII. of the Act of 1933, *semble* that *ibid.*, s. 179 (g) and Sched. VII., *ante*, pp. 1005, 1006, 1264, do not operate to save s. 178 of the Act of 1875 for purposes of this Act.

39.—(1) Where a council proposes to purchase land compulsorily under this Act, the council may, subject to the provisions of Part I. of the First Schedule to this Act (a), submit to the Board (b) an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts (c) with respect to the purchase and taking of land otherwise than by agreement. Procedure for compulsory acquisition of land.

Section 39.

(2) Where a council propose to hire land compulsorily, the council may submit to the Board (b) an order for the compulsory hiring of the land specified in the order for a period not less than fourteen nor more than thirty-five years, and the provisions of Part I. of the First Schedule to this Act shall apply to the order in like manner as it applies to an order for compulsory purchase, with the substitution of " hiring " for " purchase " and with the modifications set out in Part II. of that Schedule (d).

(3) An order under this section shall be of no force unless and until it is confirmed by the Board (b), and the Board may, subject to the provisions of the First Schedule to this Act, confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall become final and have effect as if enacted in this Act (e); and the confirmation by the Board shall be conclusive (f) evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(4) An order under this section may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired, and every such order shall, if so required by the owner of the land to be acquired, provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by such owner and his tenants of all means of access, drainage, water supply, and other similar conveniences theretofore used or enjoyed by them over the land to be acquired: Provided that, notwithstanding anything contained in this sub-section, no new easement created by or in pursuance of the order over land hired by a council shall continue beyond the determination of such hiring.

(5) In determining the amount of any disputed compensation (g) under any such order, no additional allowance shall be made on account of the purchase or hiring being compulsory.

(6) Where land authorised to be compulsorily hired by an order under this section is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession shall have the like effect (h) as if it were a lease authorised by section eighteen of the Conveyancing and Law of Property Act, 1881 (j).

(7) Where the council proposing to acquire land compulsorily is a parish council, the council shall, instead of themselves making and submitting to the Board (b) the order, represent the case to the county council, and thereupon the county council may, on behalf of the parish council, exercise the powers in relation to compulsory purchase or hiring conferred on councils by this Act, and the order shall be carried into effect by the county council, but the land shall be assured or demised to the parish council, and all expenses incurred by the county council shall be paid by the parish council (k):

Provided that, if the parish council are aggrieved by the refusal of the county council to proceed under this section, the parish council may petition the Board (b), and thereupon the Board, after such inquiry as they may think fit, may make such an order as the county council might have made, and this sub-section shall apply as if the order had been made by the county council.

(8) If, after the determination of the amount of the compensation (including in the case of land hired compulsorily the rent) to be paid to any person in respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may at any time within six weeks after the determination of the amount by notice in writing withdraw any notice to treat served on that person or on any other person interested in the land, and in such case any person on whom such a notice of withdrawal has been served shall be entitled

to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation shall, in default of agreement, be determined by arbitration (l) :

Section 39.

See the Small Holdings and Allotments Compulsory Purchase, and Compulsory Hiring, Regulations, 1936, *ante*, pp. 3154, 3157. By s. 2 (1) of the Act of 1919 a power of entry on land is given at any time after a notice to treat has been served on giving not less than fourteen days' notice to each owner, lessee and occupier of the land, and see s. 2 (2), (3) of the same Act for a power to enter in possession upon notice given where a council have agreed to purchase land subject to the interest of the person in possession thereof. By sub-section (4) of the same section the above provisions are, with such necessary adaptations as may be prescribed, applied in the case of an order authorising the compulsory hiring of land, or of an agreement to hire land. See the section at *post*, p. 5220.

The First Schedule to this Act, *post*, p. 5088, is amended by s. 17 of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 331. Subject to the provisions of that section, the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213, will apply to the assessment of compensation for land compulsorily purchased under this Act in place of the provisions in the Lands Clauses Acts.

The proviso to sub-s. (8) of this section was repealed by s. 22 and Sched. II. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 335.

(a) See this Schedule at p. 5088, *post*, and the amendments thereto in s. 17 of the 1926 Act, Vol. V., *post*.

(b) Here and elsewhere in the Act for "Board" read "Minister of Agriculture and Fisheries."

(c) See as to these Acts, note (a) to s. 38, *ante*, p. 5075.

(d) The amount of rent or compensation payable in respect of a compulsory hiring will be assessed under the Acquisition of Land (Assessment of Compensation) Act, 1919 (s. 7 (2), *ibid.*, *post*, p. 5218).

(e) As to the meaning of this expression, see *Patent Agents Institute v. Lockwood*, [1894] A. C. 347; 42 Digest 613, 139, and the comments thereon, in *Waterford Corporation v. Murphy*, [1920] 2 I. R. 165. See also *R. v. Electricity Commissioners*, [1924] 1 K. B. 171, at p. 212; 88 J. P. 13, at p. 19; Digest Supp., *per* YOUNGER, L.J.; and *R. v. Minister of Health, Ex parte Yaffe*, *ante*, p. 1779.

(f) See *Wenlock (Baroness) v. River Dee Co.* (1888), 38 Ch. D. 534; 30 Digest 294, 210; *Ex parte Ringer* (1909), 73 J. P. 436; 42 Digest 2, 1; *R. v. L. G. B.* (1910), 44 I. L. T. 176; *R. v. L. G. B.* (1911), 45 I. L. T. 65.

(g) This provision is now superfluous in view of s. 2 (1) of the Acquisition of Land (etc.) Act, 1919, *post*, p. 5214, which applies to both purchases and hirings under this Act. As to compensation where minerals come in question, see *Carlisle (Earl of) v. Northumberland C. C.* (1911), 75 J. P. 539; 42 Digest 2, 6.

(h) A lease by a mortgagor in possession will bind the mortgagee, and one by a mortgagee in possession will bind the mortgagor after redemption.

(i) See now s. 90, Law of Property Act, 1925, Vol. V., *post*.

(k) A power to sell and acquire land for annuity was given by s. 9 of the Land Settlement (Facilities) Act, 1919, *post*, p. 5222. By s. 17 of the same Act county councils are empowered to acquire land for letting to parish councils for allotments. See also s. 15 of the Allotments Act, 1922, Vol. V., *post*, for the power thereby given to county councils to let land for allotments.

(l) The powers conferred by this sub-section cannot be exercised when a council have entered on land under the power conferred by s. 2 (1) of the Land Settlement (Facilities) Act, 1919, *post*, p. 5214. See the proviso to the last-mentioned sub-section. The Acquisition of Land, etc., Act, 1919, does not apply to the determination of a dispute as to the amount of compensation payable under the provision in this sub-section.

40.—(1) Any person having power to lease land for agricultural purposes for a limited term, whether subject to any consent or conditions or not, may, subject to the like consent and conditions (if any), lease land to a council for the purposes of small holdings or allotments for a term not exceeding thirty-five years, either with or without such right of renewal as is conferred by this Act in the case of land hired compulsorily for those purposes.

Powers of certain limited owners to sell and lease land for small holdings or allotments.

(2) The like powers of leasing may be exercised, in the case of land belonging to the Crown, by the Commissioners of [Crown Lands](a), with the consent of the Treasury, in the case of land forming part of the possessions of the Duchy of Lancaster, by the Chancellor and Council of the Duchy of Lancaster by deed under the seal of the Duchy in the name of His Majesty

Section 40. his heirs and successors, and, in the case of land forming part of the possessions of the Duchy of Cornwall, by the Duke of Cornwall or other the persons for the time being having power to dispose of land belonging to that Duchy.

(3) The like powers of leasing may be exercised in the case of glebe land (b) or other land belonging to an ecclesiastical benefice by the incumbent thereof with the consent of the Ecclesiastical Commissioners alone upon such terms and conditions and in such manner as the Ecclesiastical Commissioners may approve.

(4) *Where a person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, sells, exchanges, or leases any settled land to a county council for the purposes of small holdings, the sale, exchange, or lease may be made at such a price, or for such consideration, or at such rent, as, having regard to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained.*

(5) *A person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, may grant the settled land, or a part thereof, to a county council for the purposes of small holdings in perpetuity, at a fee farm or other rent secured by condition of re-entry, or otherwise as may be agreed upon (c).*

(a) Words in brackets substituted for "Woods" in consequence of Forestry (Title of Commissioners of Woods) Order, 1924. See Crown Lands Act, 1927, s. 1 (4) (3 Halsbury's Statutes 330).

(b) See further as to the acquisition of glebe land, the Glebe Lands Act, 1888, *ante*, p. 4704; see also s. 48, *post*, p. 5081.

(c) These two sub-sections were repealed by the Settled Land Act, 1925, and were re-enacted in s. 57 of that Act (17 Halsbury's Statutes 893).

Restrictions on
the acquisition
of land.

41.—(1) No land shall be authorised by an order under this Act to be acquired compulsorily which at the date of the order forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which is woodland not wholly surrounded by or adjacent to land acquired by a council under this Act, or which at that date is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archæological interest.

(2) A council in making, and the [Minister] in confirming, an order for the compulsory acquisition of land shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose, where part only of a holding is taken, shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith, and shall also, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

(3) *No holding of fifty acres or less in extent, nor any part of any such holding, shall be authorised by an order under this Act to be acquired compulsorily for the purposes of small holdings or allotments.*

Land containing minerals is not excepted, but the owner is protected by s. 46 (1), *post*, p. 5080, and the incorporation in compulsory orders of ss. 77—85 of the Railway Clauses Act, 1845, *ante*, pp. 4156—4159 (see Schedule I., *post*, p. 5088).

By s. 16 of the Land Settlement (Facilities) Act, 1919, *post*, p. 5224, it is provided that an order under the Act in the text may notwithstanding anything in the section in the text

authorise the compulsory acquisition (a) of any land which at the date of the order-forms part of any park or of any home farm attached to and usually occupied with a mansion house, if the land is not required for the amenity or convenience of the mansion house ; or (b) of a holding of fifty acres or less in extent or any part of such a holding, but where it is proposed to acquire any land forming part of a park or any such home farm, or, except where required for purposes of allotments, a holding of fifty acres or less in extent or of an annual value not exceeding fifty pounds for the purposes of income tax, or any part of such a holding, the order authorising the acquisition of the land is not to be valid unless confirmed or made by the Minister of Agriculture and Fisheries, and it is further provided that a holding as above described shall not be compulsorily acquired where it is shown that the holding is the principal means of livelihood of the occupier thereof, except where the occupier is a tenant and consents to the acquisition. By s. 33 and Schedule III. of the same Act, *post*, p. 5236, sub-section (3) in the text is repealed. Reference should also be made to the modification made by s. 8 of the Allotments Act, 1922, Vol. V., *post*, with reference to the acquisition of land of corporations or companies held for the purposes of railways or other public undertakings. See also the restraint on compulsory hiring of pasture land imposed by s. 8 (4) of the Act of 1922, Vol. V., *post*.

**Note to
Section 41.**

42.—(1) The powers of a council to acquire land for small holdings or allotments shall, subject to the restrictions by this Act imposed, include power to acquire land for the purpose of *attaching to small holdings or allotments provided by the council* [letting to tenants of small holdings and allotments] (a) rights of grazing and other similar rights over the land so acquired, and to acquire for that purpose stints (b) and other alienable common rights of grazing.

Grazing rights, etc., to be attached to small holdings or allotments.

(2) Any rights created or acquired by the council under this section shall be *attached to the* [let to tenants of] (a) small holdings or allotments in such manner and subject to such regulations as the council think expedient.

(3) Where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any small holding in such manner and subject to such regulations as they think expedient.

(a) The words in brackets were substituted for the words italicised by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

(b) Stints or cattlegaits are rights of pasture for a stinted or limited number of beasts in a common close. See Fitzherbert's *Extenta Manerii*, 12, 13 ; Elton on Commons, ed. 1868, pp. 34, 35.

43. Where a labourer, who has been regularly employed on any land acquired by a county council for small holdings, proves to the satisfaction of the county council that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the county council [shall] (a) pay to him such compensation as they think just for his loss of employment or for his expenses in moving to another locality, and any sum so paid shall be treated as part of the expenses of the acquisition of the land (b).

Compensation for loss of employment by labourers.

(a) " Shall " was substituted for " may " by s. 25 and Sched. II. of the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

(b) No compensation is payable under this section to any person for whom a small holding is provided under the Agricultural Land (Utilisation) Act, 1931, Pt. II. (see *ibid.*, s. 21, Vol. V. and 24 Halsbury's Statutes 64).

PROVISIONS AFFECTING LAND ACQUIRED.

44.—(1) Where a council has hired land compulsorily for small holdings or allotments, the council may, by giving to the landlord not more than two years nor less than one year before the expiration of the tenancy notice in writing (a), renew the tenancy for such term, not being less than fourteen nor more than thirty-five years, as may be specified in the notice, and at such rent as, in default of agreement, may be determined by valuation by a valuer

Power of council to renew tenancy of land compulsorily hired.

Section 44. appointed by the Board (b), but otherwise on the same terms and conditions as the original lease, and so from time to time :

Provided that, if on any such notice being given, the landlord proves to the satisfaction of the Board that any land included in the tenancy is required for the amenity or convenience of any dwelling house, then such land shall be excluded from the renewed tenancy.

(2) In assessing the rent to be paid under this section the valuer (b) shall not take into account any increase in the value of the holding—

- (a) due to improvements in respect of which the council would have been entitled to compensation (c), if instead of renewing the tenancy the council had quitted the land on the determination of the tenancy ; or
- (b) due to any use to which the land might otherwise be put during the renewed term, being a use in respect of which the landlord is entitled to resume possession of the land under this Act (d) ; or
- (c) due to the establishment by the council of other small holdings or allotments in the neighbourhood,

or any depreciation in the value of the land in respect of which the landlord would have been entitled to compensation if the council had so quitted the land as aforesaid.

(a) This notice may be withdrawn at any time not less than 3 months before the termination of the tenancy if the rent assessed is such as will cause loss to the council, but compensation will be payable which must be assessed under s. 39 (8), *ante*, p. 5076 (Small Holdings and Allotments Act, 1926, s. 18 (1), Vol. V. and 1 Halsbury's Statutes 332).

(b) This rent will be determined by an official arbitrator under the Acquisition of Land, etc., Act, 1919 (see s. 7 (2), *ibid.*, *post*, p. 5218).

(c) See s. 47 (2), *post*, p. 5081, and notes thereto.

(d) See s. 46 (1), *infra*, and notes thereto.

Interchange of
land for small
holdings and
allotments.

45. A county council may sell or let to a borough, urban district, or parish council for the purposes of allotments any land acquired by them for small holdings, and a borough, urban district, or parish council may sell or let to the county council for the purpose of small holdings any land acquired by them for allotments, and the provisions of the Lands Clauses Acts with respect to the sale of superfluous land shall not apply on any such sale.

The provisions referred to in this section are ss. 127—135 of the Lands Clauses Consolidation Act, 1845 (14 Halsbury's Statutes 77, 78), and *ante*, pp. 4151, 4152.

Power to
resume possession of land
hired compulsorily.

46.—(1) Where land has been hired by a council compulsorily for small holdings or allotments, and the land or any part thereof at any time during the tenancy thereof by the council is shown to the satisfaction of the Board to be required by the landlord to be used for building, mining, or other industrial purposes, or for roads necessary therefor, it shall be lawful for the landlord to resume possession of the land or part thereof upon giving to the council twelve months' previous notice in writing of his intention so to do [or such shorter notice as may be required by the order for the compulsory hiring of the land] (a) ; and, if a part only of the land is resumed, the rent payable by the council shall as from the date of resumption be reduced by such sum as in default of agreement may be determined by valuation by a valuer appointed by the Board (b).

A notice under this section is not valid unless before it is given the Minister is satisfied that the land is required for the purpose stated. If the Minister is not satisfied no further application may be made to him in respect of the same land for the same purpose within two years after the previous application (Small Holdings and Allotments Act, 1926, s. 18 (2), Vol. V. and 1 Halsbury's Statutes 332).

See also s. 11 of the 1922 Act, Vol. V., *post*, as to the determination of questions arising on the resumption of land.

Sub-section (2) of this section was repealed by s. 22 and Sched. II. of the Act of 1926, Vol. V. and 1 Halsbury's Statutes 333, 335.

**Note to
Section 46.**

(a) The words in brackets were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

(b) The rent payable will be determined by an official arbitrator under the Acquisition of Land, etc., Act, 1919 (s. 7 (2), *ibid.*, *post*, p. 5218).

47.—(1) Where a council has let a small holding or allotment to any tenant, the tenant shall as against the council have the same rights with respect to compensation for the improvements mentioned in Part I. of the Second Schedule to this Act as he would have had if the holding had been a holding to which section forty-two of the Agricultural Holdings Act, 1908, applied : Compensation for improvements.

Provided that the tenant shall not be entitled to compensation in respect of any such improvement if executed contrary to an express prohibition in writing by the council affecting either the whole or any part of the holding or allotment ; but, if the tenant feels aggrieved by any such prohibition, he may appeal to the Board (a), who may confirm, vary, or annul the prohibition, and the decision of the Board shall be final.

(2) Where land has been hired by a council for small holdings or allotments, the council shall (*subject in the case of land hired by agreement to any agreement to the contrary*) [subject to any provision to the contrary in the agreement or order for hiring] (b) be entitled at the determination of the tenancy on quitting the land to compensation under the Agricultural Holdings Act, 1908, for any improvement mentioned in Part I. of the Second Schedule to this Act, and for any improvement mentioned in Part II. of that Schedule which was necessary or proper to adapt the land for small holdings or allotments, as if the land were a holding to which section forty-two of the Agricultural Holdings Act, 1908, applied, and the improvements mentioned in Part II. of the said Schedule were improvements mentioned in Part III. of the First Schedule to the Agricultural Holdings Act, 1908 :

Provided that, in the case of land hired compulsorily, the amount of the compensation payable to the council for those improvements shall be such sum as fairly represents the increase (if any) in the value to the landlord and his successors in title of the holding due to those improvements.

(3) The tenant of an allotment to which Part II. of this Act applies may, if he so elects, claim compensation for improvements under the Allotments and Cottage Gardens Compensation for Crops Act, 1887 (c), instead of under the Agricultural Holdings Act, 1908, as amended by this section, notwithstanding that the allotment exceeds two acres in extent.

(4) A tenant of any small holding or allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes (d) planted or acquired by him for which he has no claim for compensation, and may remove any toolhouse, shed, greenhouse, fowl-house, or pigsty built or acquired by him for which he has no claim for compensation.

The Agricultural Holdings Act, 1908, has been repealed, but s. 42 of that Act as amended by the Agricultural Holdings Act, 1913, is now re-enacted in s. 48 of the Agricultural Holdings Act, 1923 (1 Halsbury's Statutes 109). See also *In re Kedwell & Flint & Co.*, [1911] 1 K. B. 797 ; 2 Digest 43, 236, and the provisions as to compensation for improvements in the Allotments Act, 1922, Vol. V. and 1 Halsbury's Statutes 303.

(a) Now the Minister of Agriculture and Fisheries.

(b) The words in brackets were substituted for the words italicised by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

(c) This Act was repealed by the Allotments Act, 1922, to which reference must be made for the substituted provisions.

(d) See now the provisions of the Allotments Act, 1922.

48. In the case of glebe land or other land belonging to an ecclesiastical benefice hired by a council for the purposes of small holdings or allotments— Provisions as to glebe lands.

(1) The provisions of the Ecclesiastical Dilapidations Act, 1871, shall not

Section 48.

during the continuance of the tenancy be applicable to the buildings upon the land :

- (2) At the determination of the tenancy, on the council quitting the land, or at any time within twelve months thereafter, the incumbent of the benefice to which the land belongs may apply to the Ecclesiastical Commissioners for their consent to the removal of any buildings which have been erected on the land for the purpose of adapting the land for small holdings or allotments, and, on proof to the satisfaction of the Commissioners that any such buildings are useless, and that it is to the interest of the benefice that they should be removed, the incumbent may, with the consent of the Commissioners, and subject to such directions as they may give, pull down any such buildings and dispose of the materials thereof, and any proceeds shall be paid to the Commissioners to be by them applied to the improvement of the benefice in such manner as the Commissioners may direct.

CO-OPERATIVE SOCIETIES, &c.

Co-operative
societies, etc.

49.—(1) A county [or borough or urban district] (a) council may promote the formation or extension of, and may, subject to the provisions of this section, assist, societies on a co-operative basis, having for their object, or one of their objects, the provision or the profitable working of small holdings or allotments, whether in relation to the purchase of requisites, the sale of produce, credit banking, or insurance, or otherwise, and may employ as their agents for the purpose any such society as is mentioned in sub-section (4) of this section.

(2) The county [or borough or urban district] (a) council, with the consent of, and subject to regulations made by, the Local Government Board (b), may for the purpose of assisting a society make grants or advances to the society, or guarantee advances made to the society, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the council think fit. [The council may also let to the society accommodation for the storage or sale of goods] (c).

(3) Where the Board (d) themselves provide small holdings *under the provisions of this Act* (e), they may, with respect to any such society carrying on business or intending to carry on business in the neighbourhood of those small holdings, exercise the powers of a county council under this section, and the provisions of this section shall apply accordingly, except that references to the Treasury shall be substituted for references to the Local Government Board, and that the expenses and receipts of the Board under this section shall be paid out of and into the Small Holdings Account.

(4) The Board (d) with the consent of the Treasury may out of the Small Holdings Account make grants, upon such terms as the Board may determine, to any society, having as its object or one of its objects the promotion of co-operation in connection with the cultivation of small holdings or allotments.

As to selling or leasing land to co-operative societies, see s. 3 of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 324. See also s. 2 of the Allotments Act, 1925, Vol. V., *post*, which empowers the Public Works Loan Commissioners to lend money to allotment societies.

(a) The words in brackets were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

(b) For "L. G. B." now read "Minister of Health."

(c) The words in brackets were added by s. 21 and Sched. I. of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 333, 334.

(d) Now the Minister of Agriculture and Fisheries.

(e) These words were repealed by s. 25 and Second and Third Schedules to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

SMALL HOLDINGS AND ALLOTMENTS COMMITTEES.

Section 50.

See s. 14 of the Allotments Act, 1922, Vol. V., *post*, as amended by s. 12 of the Allotments Act, 1925, Vol. V., *post*, as to the establishment of allotment committees of urban authorities.

50.—(1) Every county council [other than the London County Council] shall establish a small holdings and allotments committee, consisting either wholly or partly of members of the council, but the members of the council shall be a majority, and all matters relating to the exercise and performance by the council of their powers and duties under this Act (except the power of raising a rate or borrowing money) shall stand referred to the small holdings and allotments committee, and the council before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the small holdings and allotments committee with respect to the matter in question, and the council may also delegate to the small holdings and allotments committee, with or without restrictions or conditions, as they think fit, any of their powers under this Act except the power of raising a rate or borrowing money. Small holdings and allotments committees.

(2) The small holdings and allotments committee may delegate any of their powers to sub-committees, consisting either wholly or partly of members of the committee, and in appointing any sub-committee to which is committed the powers of management of small holdings shall have regard to the advisability of including amongst the members of the sub-committee members of the councils of the boroughs, urban districts, or parishes in which the holdings are situate, or for which they are provided, and other persons acquainted with the needs and circumstances of the area for which the sub-committee act.

(3) Where any receipts or payments of money under this Act are entrusted by the county council to the small holdings and allotments committee, or any sub-committee thereof, the accounts of those receipts and payments shall be accounts of the county council, and made up and audited accordingly.

(4) This section, so far as relates to small holdings, shall apply to the council of a county borough in like manner as it applies to a county council, but, so far as it relates to allotments and sub-committees, shall not apply to the council of a county borough, without prejudice however to the power of such a council to appoint their small holdings committee, if duly qualified, to be allotment managers in pursuance of Part II. of this Act.

Words insquare brackets added by s. 21 and Sched. I. of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 333, 334.

The committee to be appointed under this section is to be a sub-committee of the Agricultural Committee of the Council (Ministry of Agriculture and Fisheries Act, 1919, ss. 7 and 8, 3 Halsbury's Statutes 453, 454.)

EXPENSES AND BORROWING.

51.—(1) For the purposes of this Act "The Small Holdings Account," opened at the Bank of England under the Small Holdings and Allotments Act, 1907, shall be continued. Small Holdings Account.

(2) There shall be paid to this account—

- (a) such money as may from time to time be provided by Parliament towards defraying the costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account; and
- (b) all sums received by the Board and directed by this Act to be paid into the Small Holdings Account.

(3) The costs and expenses of the Board directed by this Act to be paid out of the Small Holdings Account shall be paid by the Board out of the money standing to that account.

Section 51.

(4) At the end of every financial year, accounts of the receipts and expenditure of the Small Holdings Account shall be made up in such form and with such particulars as may be directed by the Treasury, and shall be audited by the Comptroller and Auditor-General as public accounts in accordance with such regulations as the Treasury may make, and shall be laid before Parliament, together with his report thereon.

(5) Payments out of, and into, the Small Holdings Account, and all other matters relating to the account, and to the money standing to the credit of the account, shall be paid and regulated in such manner as the Treasury direct.

For "Board" now read "Minister of Agriculture and Fisheries." Also note that the Small Holdings Account has now been re-named "Small Holdings and Allotments Account" (see Agricultural Land (Utilisation) Act, 1931, s. 17 (2); 24 Halsbury's Statutes 62).

Borrowing
powers and
expenses.

52.—(1) A county council may borrow money for the purposes of the provisions of this Act relating to small holdings and for the purpose of making grants or advances to co-operative societies . . . (a).

(2) The Public Works Loans Commissioners may, in manner provided by the Public Works Loans Act, 1875 (b), lend any money which may be borrowed by a county council for such purposes as aforesaid :

Provided that—

(a) the loan shall be made at the minimum rate allowed for the time being for loans out of the local loans fund ; and

(b) if the Local Government Board (c) make a recommendation to that effect, the period for which the loan is made by the Public Works Loans Commissioners may exceed the period allowed under the Public Works Loans Act, 1875, and the Acts amending that Act, but the period shall not exceed the period recommended by the Local Government Board, nor, where the purpose of the loan is the purchase of land, eighty years, or in any other case fifty years ; and

(c) as between loans for different periods, the longer duration of the loan shall not be taken as a reason for fixing a higher rate of interest.

(3) Any capital money received by a county council in payment or discharge of purchase money for land sold by them, or in repayment of an advance made by them, shall, subject to the provisions of this Act, be applied, with the sanction of the Local Government Board (c), either in repayment of debt or for any other purpose for which capital money may be applied.

(4) . . . (d).

The power to provide small holdings is now contained in Part I. of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 323. As to advances to co-operative societies, see s. 49, *ante*, p. 5082. The purposes for which a county council may borrow under this section include the making of advances for the equipment of small holdings under s. 14 of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 330.

Although county councils may by agreement delegate their functions in respect of small holdings to district councils under s. 9 of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 328, no power is given by that section to district councils to borrow money for the exercise of the delegated powers.

(a) The residue of the sub-section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1288.

(b) See this Act, *ante*, p. 4544. The provisions of sub-section (2) in the text were by s. 18 of the Allotments Act, 1922, Vol. V., *post*, extended to borrowings by the councils of boroughs, urban districts and parishes for the purpose of providing allotments.

(c) Now the Minister of Health.

(d) This sub-section was repealed by the L. G. A., 1933 (see *ante*, pp. 1194, 1288).

Expenses and
borrowing.

53.—(1) . . . (a).

(2) All expenses incurred by the county council in executing the said provisions in any district or parish on default of a district or parish council,

or incurred by the county council in or incidentally to a local inquiry under those provisions, shall be paid in the first instance out of the county fund as expenses for general county purposes, and, unless defrayed out of moneys received by the council in respect of any land acquired under those provisions otherwise than by sale or exchange, or out of money borrowed as before in this Act mentioned, shall, when the powers and duties of the district or parish council under those provisions are transferred to the county council in pursuance of this Act, be repaid to the county council as a debt by the district or parish council. Section 53.

(4) The council of a borough, urban district, or parish may borrow for the purposes of acquiring, improving, and adapting land for allotments [and the council of a borough or urban district may borrow for the purpose of grants or advances to a co-operative society] . . . (b).

(5) Sections two hundred and forty-two and two hundred and forty-three of the Public Health Act, 1875 (c), relating to loans by the Public Works Loan Commissioners to a local authority, shall apply to a loan to a borough or urban district council under this section, and, with the necessary adaptations, to a loan to a parish council under the Local Government Act, 1894, or to a county council lending money to a parish council under that Act, where the purpose for which the loan is required by the parish council is the acquisition, improvement, or adaptation of land under Part II. of this Act, in like manner as if those sections were herein re-enacted and in terms made applicable thereto.

(a) This paragraph was repealed by the L. G. A., 1933 (see *ante*, pp. 1194, 1288).

(b) The words in square brackets were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, pp. 5226, 5233. As to such grants and advances, see s. 49, *ante*, p. 5082.

Two paragraphs formerly inserted in this section were repealed by the L. G. A., 1933 (see *ante*, pp. 1194, 1288).

(c) See these sections, *ante*, pp. 4479—80.

54.—(1) Separate accounts shall be kept of the receipts and expenditure of a council under this Act with respect to small holdings or allotments, and any such receipts shall, subject to the provisions of this Act, be applicable to the purposes of small holdings or allotments, but not for any other purpose except with the consent of the [Minister of Health]; and, for the purpose of the provisions relating to the audit of accounts, any persons appointed under this Act by a council to exercise and perform powers and duties as to the management of allotments shall be deemed to be officers of the council. Separate accounts of receipts and expenditure.

(2) The council of a borough, urban district, or parish shall within one month after the end of every financial year of the council cause an annual statement, showing their receipts and expenditure with respect to allotments for that year, and their liabilities outstanding at the end of that year, to be deposited at some convenient place in the borough, district, or parish, and any ratepayer may without fee inspect and take copies of the statement.

SUPPLEMENTAL.

55. . . .

56. . . .

Provisions as to land acquired by Commissioners.

These two sections were repealed by s. 22 and Sched. II. of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 333, 335. Provisions as to Commissioners.

57.—(1) The Board *and the Small Holdings Commissioners and other* Local inquiries. officers of the Board shall have for the purpose of an inquiry in pursuance of this Act the same powers as the [Ministry of Health] and their

Section 57. inspectors respectively have for the purpose of an inquiry under the Public Health Acts (a).

(2) Notices of the inquiries shall be given and published in accordance with such general or special directions as the Board may give.

(3) A local inquiry by a county council for the purposes of the provisions of this Act relating to allotments shall be held by such one or more members of the small holdings and allotments committee (b) of the council or by such officer of the council or other person as that committee may appoint to hold the inquiry.

Words in italics repealed by s. 22 and Sched. II. of the Small Holdings and Allotments Act, 1926. The Board is now the Minister of Agriculture and Fisheries.

(a) See the P. H. A., 1875, s. 293, *ante*, p. 4504.

(b) As to this committee, see s. 50, *ante*, p. 5083.

Arbitrations
and valuations.

58.—(1) All questions which under this Act are referred to arbitration shall, unless otherwise expressly provided by this Act, be determined by a single arbitrator in accordance with the Agricultural Holdings (*England*) Act, 1908.

(2) . . .

(3) The remuneration of an arbitrator or valuer appointed under this Act shall be fixed by the Board.

The Board is now the Minister of Agriculture and Fisheries.

The Agricultural Holdings Act, 1908, is now repealed, but see ss. 16 and 17, and Sched. I. of the Agricultural Holdings Act, 1923 (1 Halsbury's Statutes 94, 95, 116).

All questions of compensation for the compulsory purchase or hiring of land under the Act must now be determined under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213. Consequently sub-s. (2) of this section was repealed by s. 22 and Sched. II. of the Small Holdings and Allotments Act, 1926. See s. 17 of that Act, Vol. V. and 1 Halsbury's Statutes 331, as to the cases in which the Act of 1919 is not to apply.

Annual report
to Parliament.

59. The Board shall make an annual report to Parliament of their proceedings, *and of the proceedings of the Commissioners*, under this Act, and also of the proceedings of the several county, borough, district, and parish councils under this Act, and for that purpose every such council shall, before such date in every year as the Board may fix, send to the Board a report of their proceedings under this Act during the preceding year.

The report of the council must now be sent to the Minister of Agriculture and Fisheries and must contain a copy of the record required to be kept under s. 13 of the Allotments Act, 1925, Vol. V. and 1 Halsbury's Statutes 322.

Words in italics repealed by s. 22 and Sched. II. of the Small Holdings and Allotments Act, 1926.

Saving for
existing
tenancies.

60. Nothing in this Act shall affect the rights and obligations under any tenancy created under any enactment repealed by this Act.

Interpretations.

61.—(1) For the purposes of this Act—

The expression "small holding" means an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding [one hundred] pounds :

The expression "allotment" includes a field garden (b) :

The expressions "agriculture" and "cultivation" shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like :

The expression "county" shall mean the area under the authority of a county council :

The expression "county council" [and the expression "council of a county" (c)] shall in relation to small holdings include the council of a county borough, and in its application to a county borough the expression "county fund" shall mean the borough fund or borough rate (d):

The expression "prescribed" means prescribed by regulations (e) made by the Board (f):

The expression "landlord," in relation to any land compulsorily hired by a council, means the person for the time being entitled to receive the rent of the land from the council.

(2) In this Act and in the enactments incorporated with this Act the expression "land" shall include any right or easement in or over land.

(3) For the purposes of this Act, any expenses incurred by a council in the enfranchisement of any land acquired by them for small holdings or allotments, or in the purchase or redemption of land tax, or any quit rent, chief rent, tithe, or other rentcharge, or other perpetual annual sum issuing out of land so acquired, shall be deemed to have been incurred in the purchase of the land.

(4) In this Act references to a parish council shall, in the case of a rural parish, not having a parish council, include references to the parish meeting.

(5) Any notice required by this Act to be served or given may be sent by registered post.

(a) The words in brackets were substituted for "fifty" by s. 16 of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 331.

(b) It should be observed that in the Act of 1922, the expressions "allotment" and "allotment garden" are used and defined (ss. 3 (7), Vol. V., *post*, and 22 (1), Vol. V., *post*), and that the Act of 1925 also contains a definition of "allotment" (*ibid.*, s. 1, Vol. V., *post*).

(c) The words in square brackets were added by the Agricultural Land (Utilisation) Act, 1931, s. 17, Sched. II, Vol. V. and 24 Halsbury's Statutes 62, 67.

(d) The borough fund and borough rate are now absorbed in the general rate fund and general rate (R. and V. Act, 1925, *ante*, p. 2113).

(e) See Regulations, *ante*, pp. 3774 *et seq.*, made under the earlier repealed Acts, but kept in force by s. 62 (a).

(f) Now the Minister of Agriculture and Fisheries.

62. *The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.* Repeal.

Provided that—

- (a) nothing in this Act shall affect any order, scheme, draft scheme, rules, regulations, report, petition, notice, or other document made, prepared, submitted, served, or given under any enactment so repealed, but every such document shall have effect as if made, prepared, submitted, served, or given under this Act; and
- (b) references in any conveyance, lease, or other document to any enactment so repealed shall have effect as if they had been references to the corresponding provisions of this Act; and
- (c) if any question arises as to whether any power of the Local Government Board under the enactments relating to allotments hereby repealed was thereby transferred to the Board of Agriculture and Fisheries, the question shall be determined by the Local Government Board, whose decision shall be final.

Before 1907, the L. G. B. exercised all the powers of the central authority in relation to allotments. The Board of Agriculture and Fisheries has now been superseded by the Minister of Agriculture and Fisheries and the L. G. B. by the Minister of Health. Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Section 63.

Short title,
commencement
and extent.

63.—(1) This Act may be cited as the Small Holdings and Allotments Act, 1908.

(2) *This Act shall come into operation on the first day of January, one thousand nine hundred and nine.*

(3) This Act shall not extend to Scotland or Ireland.

Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

SCHEDULES.

FIRST SCHEDULE.

PART I.

Provisions as to the Compulsory Acquisition of Land by a Council.

Reference should be made to the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213, which now governs arbitrations for assessing compensation in respect of land acquired or hired compulsorily, subject to s. 17 (3) of the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 332, which provides that the Act of 1919 shall not apply to any compensation payable on the withdrawal of a notice to treat under s. 39 (8), *ante*, p. 5076. The Act of 1919 has not affected the power of the Minister under paras. (5) and (6) of this Schedule to give directions as to the hearing of counsel or expert witnesses and of fixing scales of costs and such directions and scales of costs are to apply both to arbitrations before an official arbitrator in the case of compulsory purchase and of compulsory hiring (s. 17 (3) of the 1926 Act).

Throughout this Schedule "Minister of Agriculture and Fisheries" should be substituted for "Board."

(1) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the council and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (*a*) and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 (*b*), but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly (*c*).

(a) *I.e.* Lands Clauses Consolidation Act, 1845; Lands Clauses Consolidation Acts Amendment Act, 1860; Lands Clauses (Umpire) Act, 1883; Land Clauses (Taxation of Costs) Act, 1895. All these Acts will be found set out *ante*, at pp. 4104, 4252, 4664, 4938.

(b) These sections relate to the acquisition of land with minerals beneath it; see *Carlisle (Earl of) v. Northumberland C. C.* (1911), 75 J. P. 539; 42 Digest 2, 6, and cases decided under the Waterworks Clauses Act, 1847, s. 18, *ante*, p. 4179.

(c) The arbitration will now be before an official arbitrator under the Acquisition of Land, etc., Act, 1919, *post*, p. 5213. See headnote to this Schedule.

(2) The order shall be published by the council in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, leases, and occupiers of that land, as may be prescribed.

(3) If within the prescribed period no objection (*a*) to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry confirm the order, but, if such an objection has been presented and has not been withdrawn (*b*), the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the council and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

(a) The Minister may require the grounds of objection to be stated (Small Holdings and Allotments Act, 1926, s. 17 (2), Vol. V. and 1 Halsbury's Statutes 331).

(b) The Minister is no longer bound to hold an inquiry if he is of opinion that the objections can be dealt with by the arbitrator to whom questions of disputed compensation are referred (*ibid.*, s. 17 (2)).

(4) Before confirming the order the Board shall consider the report of the person who held the inquiry, and all objections made thereat. **Schedule 1.**

See, however, note (b) to the last paragraph.

(5) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised by or under this Act to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

Directions may still be given by the Minister under this and the next paragraph notwithstanding the Acquisition of Land, etc., Act, 1919, *post*, p. 5213 (Small Holdings and Allotments Act, 1926, s. 17 (3) (b), Vol. V. and 1 Halsbury's Statutes 332).

(6) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under the schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.

See the note to the last paragraph.

(7) In construing, for the purposes of this schedule, or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the council shall be deemed to be the promoters of the undertaking.

(8) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

PART II.

Provisions as to the Compulsory Hiring of Land by a Council.

Throughout this Schedule "Minister of Agriculture and Fisheries" should be substituted for "Board."

(1) The Board shall make regulations for the purpose of carrying the order into effect and of protecting the council and the persons interested in the land, and the order shall incorporate such regulations, together with such provisions of the Lands Clauses Acts (a) and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 (b), as may, subject to the prescribed adaptations, appear to the Board necessary or expedient for that purpose.

(a) See note (a) to para. (1) of Part I. of this Schedule, *ante*, p. 5088.

(b) See note (b) to para. (1) of Part I. of this Schedule, *ante*, p. 5088.

(2) The order authorising the land to be hired compulsorily shall determine the terms and conditions of the hiring other than the rent, and in particular—

(a) shall provide for the insertion in the lease of covenants by the council to cultivate the land in a proper manner and to pay to the landlord at the determination of the tenancy on the council quitting the land compensation for any depreciation of land by reason of any failure by the council, or any person deriving title under them, to observe such covenants, or by reason

Schedule 1.

- of any user of the land by the council or such person as aforesaid, and (unless otherwise agreed) to keep the buildings and premises demised in repair; and
- (b) shall not authorise the breaking up of pasture unless the Board are satisfied that it can be so broken up without depreciating the value of the land, or that the circumstances are such that small holdings [or allotments as the case may be] (a) cannot otherwise be successfully cultivated; and
 - (c) shall not, except with the consent of the landlord, confer on the council any right to fell or cut timber or trees or any right to take, sell, or carry away any minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for small holdings or allotments, and except upon payment of compensation for minerals, gravel, sand, or clay so used.

(a) These words were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226. Under this paragraph as so amended it was held that where an order had been made for compulsory hiring for allotments of a piece of land consisting entirely of pasture, the Minister of Agriculture and Fisheries, in considering whether the breaking up of the pasture should be authorised, must have regard to the particular piece of land alone, and need not be satisfied that there is no other land in the neighbourhood which could be successfully cultivated as allotments without the breaking up of pasture (*Knowles v. Salford Corporation*, [1922] 1 Ch. 328; 86 J. P. 97; 42 Digest 4, 15). See now s. 8 (4) of the Allotments Act, 1922, Vol. V., *post*, referred to in notes to s. 41, *ante*, p. 5078. By s. 8 (5) of the Allotments Act, 1922, it is enacted that paragraph 2 (b) in the text shall not apply to land compulsorily hired for the provision of allotment gardens.

(3) The determination of—

- (a) The amount of the rent to be paid by the council for the land compulsorily hired;
 - (b) The amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise; and
 - (c) Where part only of a holding held for an unexpired term is hired, the rent to be paid for the residue of the holding during the remainder of that term;
- shall in default of agreement be by valuation by a single valuer appointed by the Board (a): Provided that, if the land hired is in the occupation of a tenant, he may by notice in writing served on the council before the determination of his tenancy, require that any claim by him against the council which, under the Agricultural Holdings Act, 1908 (b), might be referred to arbitration under that Act, shall be so referred, and in such case those claims shall be determined by arbitration under that Act and not by valuation under this Act.

(a) These questions will now be determined by an official arbitrator under the Acquisition of Land, etc., Act, 1919, *post*, p. 5213 (see s. 7 (2), *ibid.*). In determining these questions any directions given by the Minister under paras. (5) and (6) of Part I. of this Schedule must be observed by the official arbitrator (Small Holdings and Allotments Act, 1926, s. 17 (3) (b), Vol. V. and 1 Halsbury's Statutes 332).

(b) The Agricultural Holdings Act, 1908, has been repealed and re-enacted by the Agricultural Holdings Act, 1923. As to arbitration under that Act, see ss. 16 *et seq.* (1 Halsbury's Statutes 94 *et seq.*).

(4) The valuer, in fixing the rent to be paid for the land compulsorily hired, shall take into consideration the rent (if any) at which the land has been let and the annual value at which the land is assessed for purposes of income tax or rating, the loss (if any) caused to the owner by severance, the terms and conditions of the hiring (including any reservation of sporting or fishing rights), and all the other circumstances connected with the land, but shall not make any allowance in respect of any use to which the land compulsorily hired might otherwise be put by the owner during the term of hiring, being a use in respect of which the owner is entitled to resume possession of the land under this Act.

As to the resumption of possession, see s. 46, *ante*, p. 5080, and notes thereto.

(5) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land compulsorily hired shall, as far as possible, be provided for by taking such compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term for which it is held by the tenant. **Schedule 1.**

(6) Any person interested in any valuation shall give the valuer all such assistance, information, and explanations as he may require, and shall produce to the valuer, or give him access to, all such books, accounts, vouchers, and other documents relating to the land to be compulsorily hired as he may reasonably require for the purposes of valuation, and such expenses [as the council shall consider or] (a) as the valuer certifies to have been properly incurred by any person in furnishing such assistance, information, and explanations, or otherwise, in relation to the valuation, shall be paid by the council.

See also s. 3 of the Acquisition of Land, etc., Act, 1919, *post*, p. 5216.

(a) These words were added by s. 25 and Second Schedule to the Land Settlement (Facilities) Act, 1919, *post*, p. 5226.

(7) On the determination of any tenancy created by compulsory hiring any questions as to the amount due by the council for depreciation shall in default of agreement be determined by arbitration.

SECOND SCHEDULE.

IMPROVEMENTS REFERRED TO IN SECTION FORTY-SEVEN.

PART I.

- (1) Planting of standard or other fruit trees permanently set out ;
- (2) Planting of fruit bushes permanently set out ;
- (3) Planting of strawberry plants ;
- (4) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.

PART II.

- (1) Erection, alteration, or enlargement of buildings ;
- (2) Formation of silos ;
- (3) Laying down of permanent pasture ;
- (4) Making and planting of osier beds ;
- (5) Making of water meadows or works of irrigation ;
- (6) Making of gardens ;
- (7) Making or improving of roads or bridges ;
- (8) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes ;
- (9) Making or removal of permanent fences ;
- (10) Planting of hops ;
- (11) Planting of orchards or fruit bushes ;
- (12) Protecting young fruit trees ;
- (13) Reclaiming of waste land ;
- (14) Warping or weiring of land ;
- (15) Embankments and sluices against floods ;
- (16) The erection of wirework in hop gardens ;
- (17) Drainage ;
- [(18) Provision of permanent sheep-dipping accommodation.
- (19) In the case of arable land, the removal of bracken, gorse, tree-roots, boulders, and other like obstructions to cultivation.]

Words in brackets added by s. 21 and Sched. I. of the Small Holding and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 333, 334.

Schedule 3.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

<i>Session and Chapter.</i>	<i>Short title.</i>	<i>Extent of Repeal,</i>
50 & 51 Vict. c. 48.	<i>The Allotments Act, 1887.</i>	<i>The whole Act, except as respect sub-sections (4) to (8) of section three so far as they are applied by any other enactment (a).</i>
53 & 54 Vict. c. 65.	<i>The Allotments Act, 1890.</i>	<i>The whole Act.</i>
55 & 56 Vict. c. 31.	<i>The Small Holdings Act, 1892.</i>	<i>The whole Act, except so far as it relates to Scotland.</i>
56 & 57 Vict. c. 73.	<i>The Local Government Act, 1894.</i>	<i>In section six, sub-sections (3) and (4).</i>
60 & 61 Vict. c. 65.	<i>The Land Transfer Act, 1897.</i>	<i>Section nineteen.</i>
7 Edw. 7, c. 54.	<i>The Small Holdings and Allotments Act, 1907.</i>	<i>The whole Act.</i>

This schedule was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(a) This exception refers to s. 9 of the L. G. A., 1894 (10 Halsbury's Statutes 782), and has no bearing on the present subject.

THE LOCAL AUTHORITIES (ADMISSION OF THE PRESS TO MEETINGS) ACT, 1908.

(8 EDW. 7, c. 43.)

An Act to provide for the Admission of Representatives of the Press to the Meetings of certain Local Authorities. [21st December 1908.]

Representatives of the press to be admitted to the meetings of a local authority subject to a proviso.

1. Representatives of the press shall be admitted to the meetings of every local authority: Provided that a local authority may temporarily exclude such representatives from a meeting as often as may be desirable at any meeting when, in the opinion of a majority of the members of the local authority present at such meeting, expressed by resolution, in view of the special nature of the business then being dealt with or about to be dealt with, such exclusion is advisable in the public interest.

This Act was passed in consequence of the decision in *Tenby Corporation v. Mason*, referred to on p. 1243, *ante*.

See ss. 3 and 4, *post*, p. 5093, as to meetings of committees.

2. For the purposes of this Act the expression "local authority" means—

Definitions.

(a) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the

provisions of any Act of Parliament or Provisional Order ; and a parish meeting under the provisions of the Local Government Act, 1894 ;

Section 2.

- (b) An education committee and a joint education committee, established under section seventeen of the Education Act, 1902, so far as respects any acts or proceedings which are not required to be submitted to the council or councils for its or their approval ;
- (c) A board of guardians, and a joint committee constituted in pursuance of section eight of the Poor Law Act, 1879, and the board of management of any school or asylum district formed under any of the Acts relating to the relief of the poor ; (a)
- (d) A central body and a distress committee under the Unemployed Workmen Act, 1905 (b) ;
- (e) The Metropolitan Water Board and a joint water board constituted under the provisions of any Act of Parliament or Provisional Order ;
- (f) Any other local body which has, or may hereafter have, the power to make a rate.

The expression " rate " means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate.

The expression " representatives of the press " means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers.

(a) The Acts relating to the relief of the poor were consolidated in the Poor Law Act, 1927 (12 Halsbury's Statutes 956), but the functions of poor law authorities (i.e. boards of guardians, boards of management of school districts, asylum boards and joint committees constituted under s. 3 of the 1927 Act or s. 8 of the 1879 Act) have now been transferred to county and county borough councils by s. 1 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883.

(b) This Act was repealed by L. G. A., 1929. See s. 12, *ibid.*, Vol. V. and 10 Halsbury's Statutes 891.

3. This Act shall not extend to any meeting of a committee of a local authority, as defined for the purposes of this Act, unless the committee is itself such an authority.

Saving for committee meetings.

4. Nothing in this Act shall be construed so as to prohibit a committee of a local authority from admitting representatives of the press to its meetings.

Powers of committee.

5. Nothing in this Act shall be construed so as to prohibit a local authority from admitting the public to its meetings.

Admission of the public.

See also model standing order 19, *ante*, p. 3279.

6. [Application to Scotland.]

7.—(1) This Act may be cited as the Local Authorities (Admission of the Press to Meetings) Act, 1908.

Short title and extent.

(2) This Act shall not extend to Ireland.

Section 43.

THE POST OFFICE ACT, 1908.

(8 EDW. 7, c. 48.)

An Act to consolidate Enactments relating to the Post Office.

[21st December, 1908.]

* * * * *

POSTMASTER-GENERAL AND OFFICERS

Exemption of
officers of Post
Office from
certain offices.

43 (a). Notwithstanding anything in any other Act, neither the Postmaster-General nor any officer of the Post Office (b) shall be compelled to serve as a . . . (c) sheriff, or in any ecclesiastical or corporate or parochial or other public officer or employment, or on any jury or inquest, or in the militia.

(a) This section reproduces s. 12 of the Post Office (Management) Act, 1837, repealed by the present Act. There is now no compulsion of any kind to accept office in a local authority (see *ante*, p. 826), but the office of sheriff is still compulsory.

(b) By s. 89 (13 Halsbury's Statutes 72), the expression "officer of the post office" includes, unless the context otherwise requires, the Postmaster-General, and any person employed in any business of the Post Office, whether employed by the Postmaster-General, or by any person under him or on behalf of the Post Office.

(c) The words "mayor or," which formerly appeared here, were repealed by the L. G. A., 1933, *ante*, p. 735 (sec note (a), *supra*).

* * * * *

EXTENSION OF POSTAL FACILITIES AND ACCOMMODATION.

Indemnity on
account of
extending
post office
accommodation

48. The Postmaster-General may contract with, or take security from, any person applying to him to establish any post or telegraph office or to extend the accommodations of the postal or telegraphic service to any place, for indemnifying the Postmaster-General against any loss he may sustain thereby, and the indemnity may be either for the whole or any part of the loss sustained, and for such time as the Postmaster-General may think necessary.

Power for local
authority to
contribute
towards new
post office, or
undertake to
pay loss on
extra postal
facilities.

49.—(1) (a) Where the council of any borough or any urban district consider that it would be beneficial to the inhabitants of the borough or district that any new post office (b) should be on a more expensive site, or of a larger size or of a more ornate building, or otherwise of a more expensive character than the Postmaster-General would otherwise provide, the council may contribute towards the new post office, either by a grant of money, or, with the consent of the [Minister of Health], by the appropriation of land belonging to the council, or by the purchase of land for the purpose.

(2) (c) Where the council of any borough or any urban district consider that it would be beneficial to the inhabitants of the borough or district that any post or telegraph office (b) should be established or any additional facilities (postal or other) (d) provided by the Postmaster-General in or for the purposes of the borough or district, the council may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of the office or the provision of the facilities.

(3) (e) Where the council of any rural district, or the parish council of a parish, or in the case of a parish not having a parish council the parish meeting, consider that it would be for the benefit, in the case of a rural district council, of any contributory place or places (f) within their district, and in the case of a parish council or parish meeting of their parish, that any post or telegraph office (b) should be established or any additional postal or other

facilities (d) provided by the Postmaster-General whether within or without the area to be benefited, that council or meeting may undertake to pay to the Postmaster-General any loss he may sustain by reason of the establishment or maintenance of the office, or the provision of the facilities : Section 49.

Provided that a rural district council shall not exercise their powers under this provision as respects any office established or facilities provided outside the contributory place proposed to be charged unless the parish council, or if there is no parish council the parish meeting, of any parish wholly or partly situated in the contributory place consent to the exercise of the powers.

(4) (g) . . .

(5) Any expenses incurred by the rural district council in pursuance of an undertaking under this section may be defrayed as special expenses legally incurred in respect of the contributory place or places, . . . (h).

(6) (g) . . .

(7) (a) The council of a borough may borrow for the purposes of sub-section (1) of this section . . . and the council of an urban district (not a borough) may borrow for the purposes of the same sub-section. . . . (h).

(8), (9), (10), (11) [*Scotland, Ireland, Channel Islands, Isle of Man.*]

(a) Sub-ss. (1) and (7) reproduce in practically identical words s. 7 of the Post Office Act, 1891, repealed by the present Act.

(b) By s. 89 (13 Halsbury's Statutes 72), unless the context otherwise requires, the expression "post office" includes any house, building, room, carriage, or place used for the purpose of the Post Office and any post office letter box, and the expression "post office letter box" includes any pillar box, wall box, or other box or receptacle provided by the permission or under the authority of the Postmaster-General for the purpose of receiving postal packets, or any of them, for transmission by or under the authority of the Postmaster-General.

(c) This sub-section reproduces in practically identical words s. 1 of the Post Office Guarantee (No. 2) Act, 1898, repealed by the present Act.

(d) Including telephone facilities.

(e) This sub-section reproduces without material alteration s. 8 of the Post Office Act, 1891, the Post Office Amendment Act, 1895, and the Post Office (Guarantee) Act, 1898, repealed by the present Act.

(f) (As to a "contributory place," see the P. H. A., 1875, s. 229 (13 Halsbury's Statutes 720).)

(g) Paragraph repealed by the L. G. A., 1933, *ante*, p. 735.

(h) Certain words here were repealed by the L. G. A., 1933, *ante*, p. 735.

PUBLIC MEETING ACT, 1908.

(8 EDW. 7, c. 66.)

An Act to prevent Disturbance of Public Meetings.

[21st December, 1908.]

1.—(1) Any person who at a lawful public meeting (a) acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of the writ for the return of a member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month. Penalty on endeavour to break up public meeting.
48 & 47 Vict. c. 51.

(2) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

**Note to
Section 1.**

(a) Reference may be made to a definition of "public meeting" in s. 4 of the Law of Libel Amendment Act, 1888 (10 Halsbury's Statutes 418). Whether a meeting of a council to which the public are admitted can be said to be a public meeting within the meaning of this Act is at any rate doubtful; but presumably a parish meeting falls within it. A meeting is not "unlawful" merely because it is held upon a highway (*Burden v. Rigler*, [1911] 1 K. B. 337; 75 J. P. 36; 26 Digest 318, 503); see as to such meetings the cases there cited in argument, and *M'Ara v. Edinburgh Magistrates*, [1913] S. C. 1059.

Short title.

2. This Act may be cited as the Public Meeting Act, 1908.

THE ELECTRIC LIGHTING ACT, 1909.

(9 Edw. 7, c. 34) (a).

An Act to amend the Acts relating to Electric Lighting. [25th November, 1909.]

Compulsory
acquisition of
land for
generating
stations.

1.—(1) The [Minister of Transport] may by Provisional Order authorise any local authority, company, or person, who is authorised by the same or any previous Provisional Order or by Act of Parliament to supply electricity in any area, to acquire compulsorily (b), or to use, for the purpose of a generating station any land specified in the Order, whether situated within or without the area of supply, and, in the case of a local authority, whether situated within or without their district.

(2) For the purpose of the acquisition of land authorised to be taken compulsorily under any such Provisional Order, the provisions of the Lands Clauses Acts which relate to the purchase and taking of lands otherwise than by agreement, and to the entry upon lands by the promoters of the undertaking, are, subject to the modifications set out in the First Schedule (c) to this Act, incorporated with the Electric Lighting Acts, as well as the provisions of those Acts already incorporated by the Electric Lighting Act, 1882.

(3) Rules (d) made by the [Minister of Transport] under section five of the Electric Lighting Act, 1882, shall provide for proper notice being given of an application for a Provisional Order, by which it is proposed to authorise the compulsory acquisition or use of land for the purpose of a generating station, to owners, lessees, and occupiers of land, and also for public notice being given of the proposal by advertisement.

(a) This Act amends the Electric Lighting Acts, 1882 and 1888, *ante*, pp. 4642, 4700. See also the Electricity (Supply) Acts, 1919, *post*, p. 5243; 1922, 1926 and 1928, Vol. V., *post*, and 7 Halsbury's 792, 826. The powers and duties of the Board of Trade under these Acts have been transferred to the Minister of Transport by s. 39 of the Electricity Supply Act, 1919, *post*, p. 5265, and the Ministry of Transport (Electricity Supply) Order, 1920, as from January 23rd, 1920.

(b) Under the previous Acts there was no power to acquire land compulsorily; for definition of "generating station," see s. 25, *post*, p. 5103. See s. 24, *post*, p. 5103, as to land belonging to gas or water undertakers. The purposes for which a joint electricity authority may be authorised to acquire compulsorily or to use land under this section, now include the development of water power for the generation of electricity. See the Electricity (Supply) Act, 1919, s. 15 (3), *post*, p. 5251.

(c) See this Schedule, *post*, p. 5104.

(d) See the rules, *ante*, p. 2620.

Construction of
generating
station on land
acquired by
agreement.

2. It shall not be lawful for any undertakers after the passing of this Act, except with the consent of the [Minister of Transport], to construct any generating station on any land acquired by them after the thirty-first day of March one thousand nine hundred and nine unless the construction is authorised and the land is specified in a special Act or Provisional Order, and the [Minister of Transport] shall not in any case give such consent until notice has been given, by advertisement or otherwise, as the [Minister of Transport] may direct, to

the local authority of the district in which the land is situate, and to owners and lessees of land situate within three hundred yards of the land upon which the generating station is to be constructed, and an opportunity has been given to such local authority, owners, and lessees, of stating any objections they may have thereto (a).

Section 2.

This section shall not apply to any station for transforming, converting or distributing electrical energy (b).

(a) Formerly, though undertakers had no powers of compulsory purchase, they were under no such restriction so long as they could purchase by agreement. But see now the restrictions on the establishment of new generating stations imposed by the Act of 1919, s. 11, *post*, p. 5247.

(b) This proviso is a limitation on the definition of "generating station" in s. 25, *post*, p. 5103, but conforms with the definition of "generating station" in s. 36 of the Electricity Supply Act, 1919, *post*, p. 5263.

3. For the purpose of enabling electricity to be brought into an area of supply from a generating station belonging to any undertakers situated outside that area, the [Minister of Transport] may by Provisional Order apply to any roads, railways, or tramways situated outside that area the provisions of the Electric Lighting Acts which authorise, or enable the [Minister of Transport] to authorise, the breaking up of any road, railway, or tramway, so far as those provisions do not already so apply (a):

Provided that a Provisional Order authorising the breaking up of roads outside the area of supply shall not be granted by the [Minister of Transport] except with the consent of the local authority in whose district the road is situate, unless the [Minister of Transport] in any case in which the consent of any such local authority is refused, [is] of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in that case [he] shall make a special report to Parliament stating the grounds on which [he has] dispensed with the consent.

(a) See ss. 12 *et seq.* of the Electric Lighting Act, 1882, *ante*, p. 4650; for definition of "road," see s. 25, *post*, p. 5103.

4.—(1) The [Minister of Transport] unless [he is] of opinion that, by reason of the character or magnitude of the proposed undertaking, the matter ought to be dealt with by private Bill, may by Provisional Order—

(a) authorise any local authority or company to supply electricity in bulk (a);

(b) provide for any supply so authorised being compulsory; and

(c) make such other provisions as appear to [him] necessary for adapting the Electric Lighting Acts to any case where a local authority or company are authorised to supply electricity in bulk, including the application to roads, railways, and tramways along the route along which lines are authorised to be laid for the purpose of giving the supply in bulk of the provisions of those Acts which authorise or enable the [Minister of Transport] to authorise the breaking up of any road, railway, or tramway:

Provided that a Provisional Order authorising the breaking up of roads outside the area of supply of the local authority or company by whom the supply is to be given shall not be granted by the [Minister of Transport] except with the consent of the local authority in whose district the road is situate, unless the [Minister of Transport], in any case in which the consent of any such local authority is refused, [is] of opinion that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in that case [he] shall make a special report to Parliament stating the ground on which [he has] dispensed with the consent.

Section 4.

(2) If the [Minister of Transport] refuse to grant a Provisional Order under this section, on the ground that the matter ought to be dealt with by a private Bill, the notices published and served for the purposes of the proposed Order shall, subject to Standing Orders, be held to have been published and served for a private Bill applying for similar powers :

Provided that the applicants for the Order shall, by notice served in the prescribed manner and within the prescribed time, inform all opponents of their intention to proceed by way of private Bill, and, subject to Standing Orders, the application for a Provisional Order shall be deemed and taken to be a petition for leave to bring in a private Bill, and the applicants shall also give such additional notice (if any) as may be required by Standing Orders.

(3) The [Minister of Transport] may, if [he] think[s] fit, by order permit any undertakers to supply electricity in bulk to any other undertakers upon such terms and subject to such conditions as may be specified in the order, if the supply can be given without breaking up any streets except such as the undertakers giving or the undertakers receiving the supply are authorised to break up ; but the [Minister of Transport] shall not in any case make such an order until notice of the intention to make the order has been given by advertisement or otherwise as the [Minister of Transport] may direct, and an opportunity has been given to any person who appears to the [Minister] to be affected of stating any objections he may have thereto.

(a) See s. 25, *post*, p. 5103, for definition of "supply in bulk"; and see s. 20, *post*, p. 5102, as to the construction of provisions prohibiting association where undertakers desire to take a supply in bulk from other undertakers.

Supply of electricity to railways, tramways, and canals partly outside area of supply.

5.—(1) Any local authority, company, or person authorised to supply electricity in any area may, with the consent of the [Minister of Transport], supply at any point within that area electricity for the purposes of haulage or traction on any railway, tramway, or canal situate partly within and partly without that area, and for the purposes of lighting vehicles and vessels used on any such railway, tramway, or canal ; but the [Minister of Transport] shall not in any case give any such consent until notice of the application for the consent has been given by advertisement or otherwise in such manner as the [Minister of Transport] may direct, and an opportunity has been given to any person who appears to the [Minister] to be affected of stating any objections he may have thereto.

(2) The [Minister of Transport] may by Provisional Order authorise any such local authority, company, or person so to supply electricity to be used for purposes incidental to the working or lighting of the railway, tramway, or canal, other than the purposes aforesaid (a).

(3) A company, local authority, or body receiving a supply of electricity under this section shall not use the electricity in such manner as to cause or to be likely to cause any interference with Government observatories or laboratories, or observatories or laboratories now or hereafter erected, owned, or managed in pursuance of any present or future statutory enactment, but this subsection shall not apply to any such company, local authority, or body who, by any Act of Parliament, or Order confirmed by or having the effect of an Act of Parliament, containing provisions for the protection of such observatories, or laboratories, are authorised to use electricity for the purposes for which a supply is authorised to be given under this section.

(a) See now s. 47, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 819, which enables undertakers to supply and railway companies to use electricity for purposes other than haulage or traction with the consent of the Minister and without the necessity for a special order. See also *Att.-Gen. v. Liverpool Corporation*, [1937] Ch. 450 ; [1937] 2 All E. R. 698.

Supply to premises outside area of

6.—(1) Where it is proved to the satisfaction of the [Minister of Transport] that the occupier of any premises is desirous of obtaining a supply of electricity

from any undertakers within whose area of supply those premises are not situate, the [Minister of Transport] may if the local authority within whose district the premises are situate, and the undertakers (if any) authorised to supply electricity to such premises, consent, by order permit the first-mentioned undertakers to give a supply to those premises on such terms and subject to such conditions as the [Minister] think[s] fit (a) :

Section 6.

supply in certain cases.

Provided that, if in the opinion of the [Minister of Transport] any consent required by this subsection is unreasonably withheld, the [Minister of Transport] may proceed as if such consent had been given.

(2) An order given by the [Minister of Transport] under this section may, for the purpose of enabling a supply to be given thereunder, confer any such powers and impose any such duties on the undertakers as would have been conferred or imposed by the Electric Lighting Acts and as might have been conferred or imposed by Provisional Order if the premises and the route along which lines are to be laid for the purpose of giving the supply were within the area of supply of the undertakers, anything in the special Act or Order relating to the undertaking to the contrary notwithstanding.

(3) If the undertakers on whom powers are conferred by an order under this section are not a local authority, the works and lines erected and laid under the powers so conferred shall, so long as the order remains in force, be deemed, for the purposes of the provisions as to purchase applicable to the undertaking to form part of the undertaking within the district of the local authority which comprises the area of supply of the undertakers, or, if that area is comprised within the districts of more than one local authority, within such of those districts as the [Minister of Transport] may determine.

(4) Nothing in this section shall enable the [Minister of Transport], without the consent of the undertakers within whose area of supply the premises are situate, to give such permission as aforesaid to any undertakers where the last-mentioned undertakers are by any Act of Parliament specifically prohibited from supplying electricity within the area of the first-mentioned undertakers.

(a) Where the undertakers obtained an order under this section to supply electricity to consumers outside the area of supply and obtained the supply therefor from an outside source, it was held to be a breach of an agreement between the undertakers and another statutory company under which a joint generating station had been provided (*Kensington Electric Lighting Co. v. Notting Hill Electric Lighting Co.* (1918), 82 J. P. 197; 20 Digest 206, 42).

7.—(1) Where the generating station, mains, or other works of a company used solely for supplying electricity within the district of a local authority are situated outside the district of that local authority, the generating station, mains, and other works so used shall for the purposes of the provisions of the Electric Lighting Acts, and any Provisional Order conferring on local authorities power to purchase undertakings (a), be deemed to be situated within the district of that local authority, and, where any generating station, mains, and other works are used solely for supplying electricity within the districts of two or more local authorities, but are not situated within any of those districts, the [Minister of Transport] may, on the application of all or any of those authorities, by Provisional Order apply this provision subject to such adaptations as the circumstances of the case may require :

Provisions as to right of local authority to purchase.

Provided that this subsection shall not, except by agreement between the local authority and the company concerned, apply to any generating station, mains, or other works authorised by a special Act passed before the passing of this Act.

(2) Any local authority having power under the Electric Lighting Acts or any Provisional Order to purchase so much of the undertaking of a company as is within the district of that local authority may, with the consent of and

Section 7.

upon such terms and conditions as may be approved by the [Minister of Transport], and, in the case of an undertaking authorised before the commencement of this Act, with the consent of the company, transfer their rights of purchase to any other local authority having power to purchase so much of the same undertaking as is within the district of that last-mentioned local authority, and the deed of transfer may contain such consequential provisions as may be necessary for giving effect to the transfer.

(a) As to an authority's power to purchase, see s. 2 of the Electric Lighting Act, 1888, *ante*, p. 4701. This power may be transferred to a joint electricity authority under s. 13 (2), Electricity Supply Act, 1919, *post*, p. 5249.

Exercise of
electric lighting
powers by
authorities
jointly.

8. The [Minister of Transport] may, with the concurrence of the [Minister of Health], by Provisional Order make such provisions as appear to them necessary or expedient, by the constitution of a joint committee or joint board or otherwise, for the joint exercise of all or any of the powers under the Electric Lighting Acts, or this Act, or any Provisional Order, by two or more local authorities as respects any area of supply consisting of the whole or parts of the districts of those authorities, in any case where it appears to them that the joint exercise of those powers would be expedient, and any such Provisional Order may contain such provisions as may appear necessary or proper for adapting any of the provisions of the Electric Lighting Acts, or this Act, or any such Provisional Order to the case of any committee or board so constituted (a).

(a) See also s. 39, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 815, and the definition of "local authority" in s. 51, *ibid.*, Vol. V. and 7 Halsbury's Statutes 821.

July notices.

9. The [Minister of Transport] may grant a Provisional Order notwithstanding that the notice required by section four (a) of the Electric Lighting Act, 1882, to be given to a local authority on or before the first day of July has not been given in the case of any local authority which waives its right to receive such a notice, and no such notice need be given to the local authority of a district in which it is not intended to take power to distribute electricity.

(a) See this section, *ante*, p. 4645.

10. (a).

(a) This section, which related to the revision of maximum price, was repealed by s. 22 (6) of the Electricity (Supply) Act, 1922. See now s. 22 of that Act, Vol. V., *post*, as to methods of charging and revision of prices.

Certification of
meters.

11.—(1) The sections set out in the Second Schedule (a) to this Act shall be substituted for sections forty-nine, fifty, fifty-one, and fifty-three of the Schedule to the Electric Lighting (Clauses) Act, 1899, as incorporated with any Act or Order passed or confirmed after the commencement of this Act.

(2) The provisions contained in the sections so set out shall, subject to such adaptations (if any) as may be necessary, be substituted for any corresponding provisions as to the use, examination, and certification of meters, and their connection and disconnection with electric lines, contained in or incorporated with any special Act or Provisional Order relating to the supply of electricity passed or confirmed before the commencement of this Act.

(a) See this Schedule at *post*, p. 5105.

Accounts of
local
authorities.

12. For the purposes of section nine (a) of the Electric Lighting Act, 1882, the accounts of any undertakers being a local authority shall be made up to the thirty-first day of March in each year, and accordingly as respects

those accounts ~~the~~ thirtieth day of June shall be substituted in that section for the twenty-fifth day of March, and the thirty-first day of March for the thirty-first day of December: Provided that, if any such undertakers show to the [Minister of Transport] that some other dates are, owing to special circumstances, more convenient in their case than the thirty-first day of March and the thirtieth day of June, the [Minister of Transport] may substitute such other dates for the said thirty-first day of March and thirtieth day of June, and this section shall as respects those undertakers be construed with the substituted dates.

Section 12.

(a) See this section, *ante*, p. 4648.

13. The [Minister of Transport] shall from time to time make a return to Parliament giving such particulars as [he] may think proper with regard to the reports (a) made by any auditors appointed by [him] to audit the accounts of any undertakers, and any action taken in such reports by the [Minister] and by the undertakers.

Return by [Minister of Transport] as to auditors' reports.

(a) See s. 30 of the Electric Lighting Act, 1882, *ante*, p. 4658, as to the annual report to be made by the Minister.

14.—(1) A local authority, company, or person who have obtained a licence, order, or special Act for the supply of electricity shall not, by transfer or otherwise, divest themselves of any of the powers, rights, or obligations conferred or imposed upon them by the Electric Lighting Acts, or by any licence, order, or special Act, otherwise than under and in accordance with a provision contained in a licence, order, or special Act authorising such a divestiture.

Restriction on transfer of powers, etc., of undertakers.

(2) Section eleven (a) of the Electric Lighting Act, 1882, shall be repealed from "but no local authority" to the end of the section.

(a) See s. 11 of the Electric Lighting Act, 1882, and note thereto, *ante*, p. 4650. But see now the powers for selling and leasing conferred by the Electricity (Supply) Acts, 1919, *post*, p. 5243, and 1922, Vol. V., *post*.

15. [Supply of electricity to premises having separate supply] (a).

(a) Repealed by s. 23 (2), Electricity (Supply) Act, 1922, and in lieu thereof, see s. 23 (1) of that Act, Vol. V. and 7 Halsbury's Statutes 789.

16. All electric lines, fittings, apparatus, and appliances let by any undertakers on hire or belonging to any undertakers, but being in or upon premises of which the undertakers are not in possession, shall, whether they be or be not fixed or fastened to any part of any premises in or upon which they may be situate, or to the soil under any such premises, at all times continue to be the property of, and be removable by the undertakers, and sections twenty-four and twenty-five of the Electric Lighting Act, 1882, shall extend and apply to all such electric lines, fittings, apparatus, and appliances: Provided that such electric lines, fittings, apparatus, or appliances have upon them respectively a distinguishing metal plate affixed to a conspicuous part thereof, or a distinguishing brand or other mark conspicuously impressed or made thereon, sufficiently indicating the undertakers as the actual owners thereof.

Electric lines, etc., let on hire, though fixed to premises, to remain the property of undertakers.

For the purposes of this section, electric lines, fittings, apparatus, and appliances disposed of by the undertakers on terms of payment by instalments shall, until the whole of the instalments have been paid, be deemed to be electric lines, fittings, apparatus, and appliances let on hire by the undertakers.

Nothing in this section shall affect the amount of the assessment for rating of any premises upon which any electric lines, fittings, apparatus, or appliances are or shall be fixed.

Section 17.

Notice to be given to undertakers before removing.

17.—(1) Twenty-four hours' notice in writing shall be given to the undertakers by every consumer before he quits any premises supplied with electrical energy by the undertakers, and, in default of such notice, the consumer so quitting shall be liable to pay to the undertakers the money accruing due in respect of such supply up to the next usual period for ascertaining the register of the meter on such premises, or the date from which any subsequent occupier of such premises may require the undertakers to supply electrical energy to such premises, whichever shall first occur.

(2) Notice to the effect of this section shall be endorsed upon any demand note for charges for electrical energy.

Power to refuse to supply electrical energy in certain cases.

18. The undertakers may refuse (a) to supply electrical energy to any person whose payments for the supply of electrical energy are for the time being in arrear (not being the subject of a bona fide dispute), whether any such payments be due to the undertakers in respect of a supply to the premises in respect of which such supply is demanded or in respect of other premises.

(a) As to the general obligation to supply, see s. 19 of the Electric Lighting Act, 1882, and notes thereto, *ante*, p. 4654.

Exemption of agreements for the supply of electricity from stamp duty.

19. Electrical energy shall be deemed to be goods, wares, or merchandise for the purposes of section fifty-nine of the Stamp Act, 1891 (a) (which makes certain contracts chargeable with stamp duty as conveyances on sale), and also for the purposes of the exemption numbered 3 under the heading "Agreement or any memorandum of an agreement" contained in the First Schedule to that Act.

(a) As to the stamping of agreements for the supply of electricity, see also *County of Durham Electrical Power Distribution Co., Ltd. v. Inland Revenue Commissioners*, [1909] 2 K. B. 604; 73 J. P. 425; 20 Digest 207, 45; *British Electric Traction Co., Ltd. v. Inland Revenue Commissioners*, [1902] 1 K. B. 441; 66 J. P. 83; 20 Digest 206, 44.

Construction of provisions prohibiting association.

20. For removing doubts, it is hereby declared that so much of any Provisional Order or special Act, or of the Schedule to the Electric Lighting (Clauses) Act, 1899 (a), as incorporated with any such Order or Act, as prohibit undertakers from associating themselves with any company or person supplying energy under any licence, Provisional Order, or special Act unless the undertakers are authorised by Parliament to do so, shall not be construed as prohibiting the undertakers from taking a supply of electricity in bulk (b) from any company or person authorised to give such a supply.

(a) See s. 3 (1), *ante*, p. 4951.

(b) As to the meaning of a "supply in bulk," see s. 25, *post*, p. 5103.

21. [*Provision as to borrowing by local authorities (a).*]

(a) Repealed by L. G. A., 1933, *ante*, p. 735.

For the protection of the Commissioner of Works.

22.—(1) With a view to the protection of the royal palaces, parks, and gardens, museums, and other public buildings, and their contents (in this section referred to as "the protected premises"), the Commissioners of Works and their engineer, or other officer duly authorised in writing under the hand of their secretary, may from time to time enter upon and inspect any generating station of any undertakers, and, if on such inspection it should appear to the Commissioners that proper precautions are not being adopted for the due consumption of smoke, and for preventing as far as reasonably practicable the evolution of oxides of sulphur, and generally for the prevention of nuisance in relation to the protected premises, they may, without prejudice to any other remedy, require the undertakers forthwith to carry out such works and to do such things as are necessary in the circumstances

(2) The undertakers shall give all reasonable facilities for such inspection to the Commissioners and their engineer or other officer as aforesaid. **Section 22.**

(3) Any dispute arising between the Commissioners and the undertakers in relation to any of the provisions of this section shall be determined by arbitration.

This section shall not apply to the station of the Westminster Electric Supply Corporation, Limited, at Horseferry Road, in the city of Westminster.

23. (a) Where in any area a local authority, company, or person is authorised to supply electricity under Act of Parliament or under licence or Provisional Order granted under the Electric Lighting Acts, it shall not, after the passing of this Act, be lawful for any other local authority, company, or person to commence to supply (b) or distribute electricity within the same area unless such supply or distribution is authorised by Act of Parliament, or by licence or Provisional Order granted in terms of the Electric Lighting Acts: Provided that this section shall not prevent any company or person from affording a supply of electrical energy to any other company or person where the business of the company or person affording the supply is not primarily that of the supply of electrical energy to consumers (c):

Prohibiting unauthorised undertakers from competing with statutory undertakers.

Provided also that this section shall not prevent any company who at the passing of this Act are empowered by their memorandum of association to generate electrical energy from affording a supply to a railway company for purposes incidental to that company's undertaking other than the conveyance of public traffic.

(a) See s. 1 of the Electric Lighting Act, 1888, *ante*, p. 4700.

(b) The word "supply" was held to include a case where the supplier and consumer were the same body and the electrical energy was required for the supplier's own purposes (*Southport Corporation v. Attorney-General*, [1924] A. C. 909; 88 J. P. 181; 20 Digest 199, 12).

Where a supply was given to a firm part only of whose works were in the area of the undertaker's supplying and the energy so supplied was used throughout the works the greater part of which were within the relators' area of supply, it was held that the supply was given at the consumer's terminals, and as these were within the area of supply of the undertaker's who gave the supply there was no breach of the prohibition in this section (*Att.-Gen. v. County of London Electric Supply Co., Ltd.*, [1926] Ch. 542; 95 L. J. Ch. 357; Digest Supp.).

(c) Where a draper and property owner generated electricity and supplied the energy to light his own business and adjoining premises owned by him he was held to be protected by this proviso (*Caerphilly U. D. C. v. Griffin*, [1928] 1 Ch. 171; 92 J. P. 5; Digest Supp.).

24. Nothing in this Act shall enable the [Minister of Transport] by Provisional Order to authorise the compulsory acquisition of any land which, at the date of the first publication of the notice for the Order, belongs to any gas or water undertakers and is used or authorised to be used by them for the purposes of their undertaking.

For the protection of gas undertakers.

25. In this Act, unless the context otherwise requires,—

Definitions.

The expression "Provisional Order" means a Provisional Order under the Electric Lighting Acts:

The expression "Electric Lighting Acts" means—

(a) As respects England and Ireland, the Electric Lighting Acts, 1882 and 1888; and

(b) As respects Scotland, the Electric Lighting Acts, 1882 and 1888, the Electric Lighting (Scotland) Act, 1890, and the Electric Lighting (Scotland) Act, 1902:

The expression "authorised" means authorised by Act of Parliament or Provisional Order (a):

Section 25.

The expression "area of supply" means any area within which any local authority, company, or person is authorised to supply electricity :
 The expression "undertakers" means any local authority, company, or person, authorised to supply electricity to whom the Electric Lighting Acts apply :

The expression "road" includes any street (b) as defined by the Electric Lighting Act, 1882 :

The expression "generating station" includes any station for generating, transforming, converting, or distributing electricity :

The expression "to supply electricity in bulk" means to supply electricity—

(a) to any local authority, company, or person authorised to distribute electricity to be used for the purposes of distribution; or

(b) to any local authority authorised by any general or special Act to undertake or contract for the lighting of streets, bridges, or public places, to be used for the purposes of lighting streets, bridges, and public places.

(a) Licences to supply electricity under the Act of 1882, *ante*, p. 4642, are practically obsolete.

(b) See definition of "street" in s. 32, *ante*, p. 4658.

26. [*Application to Scotland and Ireland.*]

Short title,
construction,
and commence-
ment.

27.—(1) This Act may be cited as the Electric Lighting Act, 1909.

(2) This Act and the Electric Lighting Acts (a) shall be construed together as one Act, and may be cited as the Electric Lighting Acts, 1882 to 1909.

(3) This Act shall come into operation on the first day of April nineteen hundred and ten

(a) *I.e.*, the Acts of 1882 and 1888, *ante*, pp. 4642, 4700 (see s. 25, *ante*, p. 5103).

SCHEDULES.

FIRST SCHEDULE

(Section I.)

MODIFICATIONS OF THE LANDS CLAUSES ACTS.

The following modifications shall have effect in the construction of the provisions of the Lands Clauses Acts incorporated by this Act for the purposes of the Electric Lighting Acts :—

(a) The expression "special Act" means the Electric Lighting Acts, inclusive of any Provisional Order authorising the compulsory acquisition of land, except that the period of three years mentioned in section one hundred and twenty-three of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), shall be calculated from the passing of the Act confirming the Provisional Order; and

(b) The expressions "the promoters" and "the undertaking" mean respectively the undertakers and the undertaking under the Electric Lighting Acts, and the expression "company" in the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, and the Railways Act (Ireland), 1864, means the undertakers under the Electric Lighting Acts; and

The expression "land" includes easements in or relating to land.

SECOND SCHEDULE.

Sched. II.

(Section XI.)

SECTIONS TO BE SUBSTITUTED FOR SECTIONS 49, 50, 51, AND 53 OF THE SCHEDULE TO THE ELECTRIC LIGHTING (CLAUSES) ACT, 1899.

"49. The amount of energy supplied by the undertakers to any ordinary consumer under the special Order, or the electrical quantity contained in the supply (according to the method by which the undertakers elect to charge), hereinafter referred to as 'the value of the supply,' shall, except as otherwise agreed between the consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of the special Order, and fixed and connected with the service lines in some manner approved by the [Minister of Transport]. Meters to be used except by agreement.

"50. A meter shall be considered to be duly certified under the provisions of the special Order if it be certified by an electric inspector appointed under the special Order to be a meter capable of ascertaining the value of the supply within such limits of error as may, as respects meters of the class to which the meter belongs, be allowed by the [Minister of Transport], and to be of some construction and pattern approved by the [Minister of Transport], and every such meter is hereinafter referred to as a 'certified meter': Provided that, where any alteration is made in any certified meter, that meter shall cease to be a certified meter unless and until it is again certified as a certified meter under the provisions of the special Order. Meter to be certified.

"51. An electric inspector, on being required to do so by the undertakers or by any consumer, and on payment of the prescribed fee by the party so requiring him, shall examine any meter used or intended to be used for ascertaining the value of the supply, and shall certify it as a certified meter if he considers it entitled to be so certified, and the inspector shall, on the like requisition and payment, examine the manner in which any such meter has been fixed and connected with the service lines, and shall certify that it has been fixed and connected with the service lines in some manner approved by the [Minister of Transport], if he considers that it is entitled to be so certified. Inspector to certify meter.

"53. The undertakers shall not, nor shall any consumer, connect any meter used or to be used under the special Order for ascertaining the value of the supply with any electric line through which energy is supplied by the undertakers, or disconnect any such meter from any such electric line, unless the one has given to the other not less than forty-eight hours' notice in writing of the intention to do so, and the undertakers or any consumer acting in contravention of this section shall be liable for each offence to a penalty not exceeding forty shillings." Meters not to be connected or disconnected without notice.

THE DEVELOPMENT AND ROAD IMPROVEMENT FUNDS ACT, 1909.

(9 EDW. 7, c. 47.)

An Act to promote the Economic Development of the United Kingdom and the Improvement of Roads therein. [3rd December 1909.]

PART I.

DEVELOPMENT.

1.—(1) The Treasury may, upon the recommendation of the Development Commissioners appointed under this Act, make advances to a Government Department, or through a Government Department to a public authority, university, college, school, or institution, or an association of persons or company not trading for profit, either by way of grant or by way of loan, Power to make advances for certain purposes.

Section 1. or partly in one way and partly in the other, and upon such terms and subject to such conditions as they may think fit, for any of the following purposes :—

- (a) Aiding and developing agriculture and rural industries by promoting scientific research, instruction and experiments in the science, methods and practice of agriculture (including the provision of farm-institutes (a)), the organisation of co-operation, instruction in marketing produce, and the extension of the provision of small holdings; and by the adoption of any other means which appear calculated to develop agriculture and rural industries;
 - (b) *Forestry (including (1) the conducting of inquiries, experiments, and research for the purpose of promoting forestry and the teaching of methods of afforestation; (2) the purchase and planting of land found after inquiry to be suitable for afforestation) (b);*
 - (c) The reclamation and drainage of land
 - (d) The general improvement of rural transport (*including the making of light railways but not including the construction or improvement of roads*) (c);
 - (e) The construction and improvement of harbours (d);
 - (f) *The construction and improvement of inland navigations* (e);
 - (g) The development and improvement of fisheries;
- and for any other purpose calculated to promote the economic development of the United Kingdom (f).

(2) All applications for advances under this Part of this Act shall be made to the Treasury in accordance with regulations (g) made by the Treasury.

(3) No advance shall be made for any purpose which might be carried out under the provisions of the Small Holdings and Allotments Act, 1908, upon any terms or conditions different from those contained in that statute except for some special reason which shall be stated in the annual report of the Development Commissioners.

Words in italics in this section repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(a) As to grants toward "farm institutes," see a circular of the Board of Education, dated July 14th, 1911.

(b) Forestry commissioners have now been appointed under the Forestry Act, 1919 (3 Halsbury's Statutes 443), and no further advance is to be made under this section in the text (Forestry (Transfer of Woods) Act, 1923 (*op. cit.* 459)).

(c) See as to advances for construction, etc., of roads s. 17 (1) of the Ministry of Transport Act, 1919, *post*, p. 5206. Under that section the powers of the Development Commissioners in relation to light railways were determined, but advances may now be made by the Minister of Transport for the construction, improvement or maintenance of light railways.

(d) The powers of the Commissioners in relation to harbours are now limited to the construction, improvement and maintenance of harbours in connection with the improvement and development of fisheries, and in such cases the Minister of Transport must be consulted before any recommendation is made (Ministry of Transport Act, 1919, s. 17 (1)).

(e) The powers of the Commissioners in relation to inland navigation were determined by the Ministry of Transport Act, 1919, s. 17 (1), but similar powers are given to the Minister under that section.

(f) The Commissioners have stated that they regard it as outside their province to assist in averting or repairing damage which threatens urban and residential property on the coast. They have, however, recommended the Treasury to make advances for the protection from the sea of agricultural land.

(g) See Regulations dated June 13th, 1910.

Establishment
of development
fund.

2.—(1) All advances, whether by way of grant or by way of loan, made under this Part of this Act shall be made out of a fund, called the development fund, into which shall be paid—

- (a) Such moneys as may from time to time be provided by Parliament for the purposes of this Part of this Act;

Section 2.

- (b) The sums issued out of the Consolidated Fund under this section ; and
 (c) Any sums received by the Treasury by way of interest on or repayment of any advance made by way of loan under this Part of this Act, and any profits or proceeds derived from the expenditure of any advance which by the terms on which the advance was made are to be paid to the Treasury.

(2) *There shall be charged on and issued out of the Consolidated Fund, or the growing produce thereof, in the year ending the thirty-first day of March nineteen hundred and eleven, and in each of the next succeeding four years, the sum of five hundred thousand pounds.*

(3) The Treasury may accept any gifts made to them for all or any of the purposes for which advances may be made under this Part of this Act and, subject to the terms of gift, apply them for the purposes of this Part of this Act in accordance with regulations made by the Treasury.

(4) The Treasury shall cause an account to be prepared and transmitted to the Comptroller and Auditor-General for examination, on or before the thirtieth day of September in every year, showing the receipts into and issues out of the development fund in the financial year ended on the thirty-first day of March preceding, and the Comptroller and Auditor-General shall certify and report upon the same, and such account and report shall be laid before Parliament by the Treasury on or before the thirty-first day of January in the following year if Parliament be then sitting, and, if not sitting, then within one week after Parliament shall be next assembled.

(5) Payments out of and into the development fund, and all other matters relating to the fund and the moneys standing to the credit of the fund, shall be made and regulated in such manner as the Treasury may by minute to be laid before Parliament direct.

(6) The Treasury may from time to time invest any moneys standing to the credit of the development fund in any securities in which trustees are by law authorised to invest trust funds.

Sub-s. (2) was repealed as from March 31st, 1912, by the Finance Act, 1911. Section 16 (1) (a) of that Act (see *post*, p. 5119) provided for payment into the fund of one and a half million pounds instead of the three sums due in 1913, 1914, and 1915.

3.—(1) For the purposes of this Part of this Act it shall be lawful for His Majesty by warrant under the sign manual to appoint [eight] Commissioners, to be styled the Development Commissioners, of whom one to be appointed by His Majesty shall be chairman. Constitution of
Development
Commissioners.

(2) Subject to the provisions of this section, the term of office of a Commissioner shall be ten years. One Commissioner shall retire every *second* year, but a retiring Commissioner may be reappointed. The order in which the Commissioners first appointed are to retire shall be determined by His Majesty. On a casual vacancy occurring by reason of the death, resignation, or incapacity of a Commissioner, or otherwise, the person appointed by His Majesty to fill the vacancy shall continue in office until the Commissioner in whose place he was appointed would have retired, and shall then retire.

(3) There shall be paid to not more than two of the Commissioners such salaries, not exceeding in the aggregate three thousand pounds in each year, as the Treasury may direct.

(4) The Commissioners may act by [four] of their number and notwithstanding a vacancy in their number, and, subject to the approval of the Treasury, may regulate their own procedure.

(5) The Commissioners may, with the consent of the Treasury, appoint and employ such officers and servants for the purposes of this Part of this Act as they think necessary, and may remove any officer or servant so appointed

Section 3. and employed, and there shall be paid to such officers and servants such salaries or remuneration as the Commissioners, with the consent of the Treasury, may determine.

(6) The salaries of the Commissioners and the salaries or remuneration of their officers and servants, and any expenses incurred by the Commissioners in the execution of their duties under this Part of this Act, to such amount as may be sanctioned by the Treasury, shall be defrayed out of the development fund.

This section has been amended by the Development and Road Improvement Funds Acts, 1910 (9 Halsbury's Statutes 218). Under that Act the number of commissioners was increased from five to eight, four now form a quorum instead of three and the provisions as to retirement are varied (s. 1 of the Act of 1910 (*op. cit.*)).

As to pensions of Development Commissioners and their officers, see s. 2 of the Act of 1910 (*op. cit.*).

Powers and
duties of
Commissioners.

4.—(1) Every application for an advance under this Part of this Act, whether by way of grant or by way of loan, by any body qualified to receive an advance under this Part of this Act, shall, if the applicant is a Government Department, be referred by the Treasury to the Development Commissioners, and, if the applicant is any other body or persons, shall be sent by the Treasury to the Government Department concerned, to be by them referred together with their report thereon to the Development Commissioners.

(2) The Commissioners shall consider and report to the Treasury on every application so referred to them, and may for that purpose, if necessary, hold inquiries either by themselves, or by any of their officers, or any other person appointed for the purpose.

(3) The Commissioners may also appoint advisory committees, and may submit to any such advisory committee for their advice any application referred to them.

(4) The Commissioners may also frame schemes with respect to any of the matters for which advances may be made under this Part of this Act with a view to their adoption by a Government Department or other body or persons to whom an advance may be made.

(5) Before making any recommendation for an advance for the purpose of the improvement of rural transport, the Commissioners shall consult with the [Minister of Transport].

(6) The Commissioners shall make to the Treasury an annual report of their proceedings, and such report shall be laid annually before Parliament by the Treasury.

Power to
acquire land for
certain
purposes.

5.—(1) Where an advance is made under this Part of this Act for any purpose which involves the acquisition of land, the Department, body, or persons to whom the advance is made, may acquire and hold land for the purpose, and, where they are unable to acquire by agreement on reasonable terms any land which they consider necessary, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Commissioners shall have power to make such order.

(2) No land shall be authorised by an order under this section to be acquired compulsorily which, at the date of the order, forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which at that date is the property of any local authority, or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archæological interest.

(3) The Commissioners, in making an order for the compulsory purchase of land, shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose where part only of a holding is taken shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which are used in connection with the holding and the quantity and nature of the land available for occupation therewith, and shall also so far as practicable avoid displacing any considerable number of agricultural labourers or others employed on or about the land. Section 5.

6. For the purposes of this Part of this Act the expression "agriculture and rural industries" includes agriculture, horticulture, dairying, the breeding of horses, cattle, and other live stock and poultry, the cultivation of bees, home and cottage industries, the cultivation and preparation of flax, the cultivation and manufacture of tobacco, and any industries immediately connected with and subservient to any of the said matters. Definition of agriculture and rural industries.

PART II.

ROAD IMPROVEMENT.

This part of this Act has been amended by the Roads Act, 1920, and the Roads Improvement Act, 1925. Both these Acts are set out in Vol. V., *post*. The Road Board which was constituted by s. 7 of this Act has ceased to exist, its powers and duties having been transferred to the Minister of Transport by the Ministry of Transport Act, 1919, *post*, p. 5195, consequently throughout this part of the Act, the words "Minister of Transport" or "Minister" have been substituted for "Road Board" or "Board."

Consequent upon the provisions of s. 29 (1) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, "county road" has been substituted for "main road" wherever those words occur in this Act. The powers of county councils as highway authorities are considerably extended by Part V. of that Act, Vol. V. and 10 Halsbury's Statutes 927. Rural district councils cease to be highway authority and their functions are transferred to county councils (s. 30, *ibid.*, Vol. V. and 10 Halsbury's Statutes 904). All classified roads in urban districts are also transferred to the county councils (s. 31, *ibid.*, Vol. V. and 10 Halsbury's Statutes 905) unless "claimed" under s. 32, *ibid.*, Vol. V. and 10 Halsbury's Statutes 906, by an urban district council entitled to make such a claim. The expression "county road" not only includes the former "main roads" but also the roads transferred to county councils by the Act.

7. [Constitution of Road Board.]

Repealed by s. 4 of Roads Act, 1920, Vol. V. and 19 Halsbury's Statutes 88.

8.—(1) The [Minister of Transport] shall have power, with the approval of the Treasury— Powers of [Minister of Transport].

(a) [to make to any highway authority advances in respect of the construction of new roads or the maintenance or improvement of existing roads or to make such advances in conjunction with a highway authority, to any company or person]; (a)

(b) to construct and maintain any new roads; which appear to the [Minister] to be required for facilitating road traffic.

(2) Where advances have been made to highway authorities in respect of the construction of new roads, the [Minister] may, where [he thinks] it desirable, also contribute towards the cost of maintenance of such new roads.

(3) . . . (b).

(4) An advance to a highway authority may be either by way of grant or by way of loan, or partly in one way and partly in the other, and shall be upon such terms and subject to such conditions as the [Minister] think[s] fit.

(5) For the purposes of this Part of this Act the expression "improvement of roads" includes the widening of any road, the cutting off the corners of

Section 8.

any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair; and the expression "roads" includes bridges, viaducts, subways [roadferries and footways] (c).

The Road Board issued a Circular (July, 1910) as to applications for advances under Part II. of the Act, *ante*, p. 5109. The Minister of Transport issues directions and specifications for the tar-treatment of roads. As to the liability of a highway authority for damage caused by tar-spraying roads, see *Dell v. Chesham U. D. C.*, [1921] 3 K. B. 427; 85 J. P. 186; 26 Digest 408, 1290.

(a) The words in brackets were substituted for the words "to make advances to county councils and other highway authorities in respect of the construction of new roads or the improvement of existing roads" by s. 4 and Sched. I., Roads Act, 1920, Vol. V., *post*. The amendment is consequential upon s. 17, Ministry of Transport Act, 1919, *post*, p. 5206. For extension of this power to cases under the Restriction of Ribbon Development Act, 1935, see s. 19 (2) of that Act, *ante*, p. 2040.

(b) Repealed by s. 4, Roads Act, 1920, Vol. V., *post*.

(c) The words in brackets were added by s. 4 and Sched. I. of Roads Act, 1920, Vol. V., *post*.

By s. 2 of the Roads Improvement Act, 1925, Vol. V., *post*, the expression "improvement of roads" is extended to include the planting, laying out, maintenance and protection of trees, shrubs and grass margins in and beside roads (see s. 1 of the Act of 1925, Vol. V., *post*), the placing on or near roads of notices, milestones and sign posts (see s. 24 of the Highway Act, 1835, and s. 6 of Highway Rate, etc., Act, 1882), the freeing of roads from tolls (see s. 3 of the Highways and Bridges Act, 1891, *ante*, p. 4833) and the prescription of building lines along roads (see s. 5 of the Roads Improvement Act, 1925, Vol. V., *post*).

By s. 4 (8) of the Act of 1925, Vol. V., *post*, the exercise of the powers under that section for removing or preventing the obstruction of view at corners shall be deemed to be an improvement in respect of which the Minister may make a grant under this section.

By s. 57 (2) of Road Traffic Act, 1930, "improvement of roads" in this part of this Act is extended to include the erection, lighting, maintenance, alteration and removal of refuges in roads and subways under roads for the use of foot passengers.

Provisions as to roads constructed by [Minister of Transport].

9.—(1) Every road constructed by the [Minister] under the provisions of this Part of this Act shall be a public highway, and the enactments relating to highways and bridges shall apply to such roads accordingly, except that every such road shall be maintainable by and at the cost of the [Minister], and, for the purpose of the maintenance, repair, improvement, and enlargement of or dealing with any such road, the [Minister] shall have the same powers (except the power of levying a rate) and be subject to the same duties as a county council have and are subject to as respects [county roads], and may further exercise any powers vested in a county council for the purposes of the maintenance and repair of bridges, and the [Minister] shall have the same powers as a county council for the preventing and removing of obstructions:

Provided that—

(a) Communications between a road or path and a road constructed by the [Minister] shall be made in manner to be approved by the [Minister]; and

(b) The [Minister] and any highway authority in whose district any part of any such road is situate may contract for the undertaking by such authority of the maintenance and repair of the part of such road in their district; and, for the purposes of such undertaking, the highway authority shall have the same powers and be subject to the same duties and liabilities as if the road were a road vested in the highway authority.

(2) Before the Treasury approve of the construction of a new road by the [Minister] they shall consult with the [Minister of Health] (a) and shall satisfy themselves that notice of the intention to construct the road has been sent by the [Minister] to every highway authority in the area of which any part of the proposed road will be situate, and shall consider any objections to the proposed road which they may receive from any such authority (b).

(a) The effect of the Ministry of Transport (Ministry of Health Exception of Powers) Order, 1919, is to substitute the Minister of Transport for the Minister of Health in this subsection.

**Note to
Section 9.**

(b) By the Unemployment (Relief Works) Act, 1920, s. 4 (20 Halsbury's Statutes 655), this sub-section "shall not apply with respect to the construction of any new road where the Minister of Labour certifies that, having regard to the exceptional amount of unemployment in any area, it is desirable that the construction of the new road should be proceeded with forthwith with a view to the speedy provision of employment for unemployed persons from that area."

10.—(1) Where the [Minister] make[s] an advance to a highway authority in respect of the construction of a new road, the [Minister] may authorise the authority to construct the road, and where so authorised the highway authority shall have power to construct the road and to do all such acts as may be necessary for the purpose, and any expenses of the authority, so far as not defrayed out of the advance, shall be defrayed as expenses incurred by the authority in exercise of their powers as highway authority, and the enactments relating to such expenses, including the provisions as to borrowing, shall apply accordingly.

Provisions as to
construction of
new road by
highway
authorities.

(2) Where the highway authority to whom the advance is made are a county council, the new road, when constructed, shall be a [county road] and in any other case shall be a highway repairable by the inhabitants at large :

Provided that the maintenance of any such road within the administrative county of London shall devolve upon the local authority responsible for the maintenance of streets and roads in whose district the same is situate.

The provision of sub-s. (2) of this section is specially referred to in s. 29 (1) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 903, in defining "county roads." See the notes to that sub-section.

11.—(1) Where the [Minister proposes] (a) to construct a new road under this Part of this Act, the [Minister] may acquire land for the purpose, and may in addition, acquire land on either side of the proposed road within two hundred and twenty yards from the middle of the proposed road (b).

Acquisition
of land.

(2) . . . (c).

(3) Where a highway authority are authorised to construct a new road under this Part of this Act, or an advance is made to such an authority in respect of the improvement of an existing road, an authority may acquire land for the purpose of such construction or improvement.

(4) For the purpose of the purchase of land by agreement under this Part of this Act by the [Minister] or a highway authority the Lands Clauses Acts shall be incorporated with this Part of this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight (d) of the Public Health Act, 1875, shall apply as if the [Minister] and the highway authority were referred to therein.

(5) Where the [Minister] or any highway authority are, unable to acquire by agreement on reasonable terms any land which they consider necessary, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Commissioners shall have power to make such an order : Provided that the provisions of Part I. of this Act prohibiting the compulsory acquisition of the classes of land mentioned in sub-section (2) (e) of section five of this Act shall apply to the acquisition by the [Minister] of land on either side of a road proposed to be constructed by the [Minister].

(6) The [Minister] shall have full power, with the approval of the Treasury, to sell, lease, and manage any land acquired by [him] under this Part of this Act and not required for the new road . . . (f).

By s. 3 of the Roads Improvement Act, 1925, Vol. V., *post*, this section is applied to land required for the purpose of being given in exchange for any land forming part of any

**Note to
Section 11.**

common, open space or allotment which is required for the improvement or construction of a road under this Act. As to the necessity for such an exchange, see s. 19, *post*, p. 5112.

(a) The words in brackets were substituted for the words "Treasury have approved a proposal by the Road Board," by s. 4 and Sched. I., Roads Act, 1920, Vol. V., *post*.

(b) Observe that this sub-section only applies where the Minister is to construct the road. Reference may, however, be made to s. 154 of the P. H. A., 1875, *ante*, p. 4425, as amended by s. 83 of the P. H. A., 1925, Vol. V., *post*, which empowers local authorities to purchase lands for the purpose, *inter alia*, of the improvement and development of frontages or of the lands abutting on or adjacent to any street.

(c) Repealed by s. 20 (3) and Sched. III., Roads Act, 1920, Vol. V., *ante*.

(d) Now repealed; see L. G. A., 1933, s. 173, *ante*, p. 1001.

(e) In the Act as originally printed, "sub-section (3)" appeared by a clerical error for "sub-section (2)"; see the amending Act of 1910 (9 Halsbury's Statutes 218).

(f) The closing portion of this section was repealed by s. 4 and Sched. I., Roads Act, 1920, Vol. V., *post*.

12. [*Expenses and Receipts of Road Board.*]

Repealed by s. 4, Roads Act, 1920, Vol. V., *post*.

Power to
borrow.

13.—(1) The [Minister] may, with the approval of and subject to regulations made by the Treasury, borrow on the security of the [Road Fund] for the purpose of meeting any expenditure which appears to the Treasury to be of such a nature that it ought to be spread over a term of years, so however that the total amount required for the payment of interest on and the repayment of money so borrowed shall not exceed in any year the sum of two hundred thousand pounds.

(2) If and so far as the [Road Fund] is insufficient to meet the amount required for the payment of interest on and the repayment of principal in any year, that amount shall be charged on and payable out of the Consolidated Fund or the growing produce thereof, but any sums so paid out of the Consolidated Fund shall be made good out of the [Road Fund].

The Road Fund was established by s. 3, Roads Act, 1920, Vol. V., *post*, and takes the place of the road improvement grant.

14. [*Annual Report to Parliament.*]

Repealed by s. 4, Roads Act, 1920. Section 3 (6) of the same Act requires the Minister to make an annual report to parliament of his proceedings under this part of this Act.

Application to
London.

15. For the purposes of this Part of this Act the expression "highway authority" includes as respects the administrative county of London, the London County Council.

By s. 57 (1) of the Road Traffic Act, 1930, the Minister of Transport is declared to be a highway authority for the purposes of this part of this Act in relation to any roads for the maintenance of which he is responsible.

16. [*Application to Scotland.*]

17. [*Application to Ireland.*]

PART III.

GENERAL.

Obligation to
consider the
state and
prospects or
employment.

18. In approving, executing, or making advances in respect of the execution of any work under this Act involving the employment of labour on a considerable scale, regard shall be had so far as is reasonably practicable to the general state and prospects of employment.

Provisions as to
commons and
open spaces.

19.—(1) Where an order made by the Development Commissioners under Part I. or Part II. of this Act authorises the acquisition of any land forming part of any common, open space, or allotment, the order, so far as it relates to the acquisition of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the order provides for giving in exchange for such land other land, not being less in area, certified by the [Minister] of Agriculture and Fisheries to be equally

advantageous to the persons, if any, entitled to commonable or other rights, **Section 19.**
and to the public :

Provided that—

- (a) (a) . . .
 - (b) This provision shall not apply to the acquisition of any common land for the purpose of the construction of a new road or the improvement of an existing road within a rural district ; and
 - (c) Nothing in this Act shall authorise the acquisition of land on either side of a new road to be constructed by the [Minister of Transport] where the land forms part of a common, open space, or allotment.
- (2) Before giving any such certificate of equality of exchange, the [Minister] of Agriculture and Fisheries shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.
- (3) Where any order of the Development Commissioners authorises such an exchange, the order shall provide for vesting the land given in exchange in the persons in whom the common, open space, or allotment was vested, subject to the same rights, trusts, and incidents as attached to the common, open space, or allotment, and for discharging the part of the common, open space, or allotment acquired from all rights, trusts, and incidents to which it was previously subject.
- (4) For the purposes of this Act the expression “common” shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green ; the expression “open space” means any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground ; and the expression “allotment” means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

Land may be acquired under s. 11, *ante*, p. 5111, for purposes of exchange under this section as if it were required for the construction or improvement of the road concerned (Roads Improvement Act, 1925, s. 3, Vol. V. and 9 Halsbury's Statutes 221).

(a) This proviso which related to the acquisition of common lands for the purpose of forestry was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183), consequent upon the transfer of the powers of the Commissioners in relation to forestry under the Forestry Act, 1919 (3 Halsbury's Statutes 443).

20. This Act may be cited as the Development and Road Improvement Short title.
Funds Act, 1909.

SCHEDULE.

SECTIONS 5 AND 11.

(1) Where a Government Department, body, or persons to whom an advance is made under Part I. of this Act, or the [Minister of Transport] or a highway authority (in this Schedule referred to as “the undertakers”) propose to purchase land compulsorily under this Act, the undertakers may submit to the Development Commissioners a draft order putting in force, as respects the lands specified in the order, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) The order shall be in the prescribed form and shall contain such provisions as the Development Commissioners may prescribe for the purpose of carrying the order into effect, and shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, or, in Scotland, sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845, and those Acts shall apply accordingly, subject to the following modifications :—

- (a) Any question of disputed compensation shall be determined by a single arbitrator who shall be appointed, and whose remuneration shall be fixed, as respects England, by the Lord Chief Justice of England, as respects

Schedule,
—

- Scotland by the Lord President of the Court of Session, and as respects Ireland by the Lord Chief Justice of Ireland, and the arbitrator so appointed shall be deemed to be an arbitrator within the meaning of those Acts;
- (b) An arbitrator so appointed may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow, as costs of the arbitration, the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers have been caused or incurred unnecessarily;
 - (c) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory, and the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed work or road for which the land is authorised to be acquired by the undertakers;
 - (d) The provisions of the Lands Clauses Acts as to the sale of superfluous land shall not apply.

The assessment of compensation must now be determined by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 5213, and the provisions of that Act in respect of the assessment of compensation will apply.

(3) The draft order shall be published by the undertakers in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land as may be prescribed, and in the case of land forming part of a common, open space, or allotment, also to the [Minister] of Agriculture and Fisheries.

(4) An order authorising the acquisition of any buildings may, if a portion only of those buildings are required for the purposes of the undertakers, notwithstanding anything in the Lands Clauses Acts, require the owners of and other persons interested in those buildings to sell and convey to the undertakers the portions only of the buildings so required, if the arbitrator is of opinion that such portions can be severed from the remainder of the properties without material detriment thereto, and, in such case, the undertakers shall not be obliged to purchase the whole or any greater portion thereof, and shall pay for the portions acquired by them and make compensation for any damage sustained by the owners thereof or other parties interested therein by severance or otherwise.

This section in effect excludes s. 92 of the Lands Clauses Consolidation Act, 1845, *ante* p. 4139.

(5) An order may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired.

(6) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

The provisions of this paragraph shall not apply to Scotland or Ireland.

(7) In construing, for the purposes of this Schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the undertakers shall be deemed to be the promoters of the undertaking, and the expression "land" shall include easements, in or relating to land.

(8) In this Schedule the expression "prescribed" means prescribed by the Development Commissioners, and in Scotland the expression "easements" means servitudes.

THE FINANCE (1909-10) ACT, 1910.

(10 EDW. 7, c. 8.)

PART I.

DUTIES ON LAND VALUES.

* * * * *

SUPPLEMENTAL.

35.—(1) No duty under this Part of this Act (a) shall be charged in respect of any land or interest in land held by or on behalf of a rating authority or any statutory combination representative of two or more local or rating authorities, . . . (b). Exemption for land held by rating authorities.

(2) For the purposes of this section the expression "rating authority" means any body who have power to raise a rate or administer money raised by a rate; and the expression "rate" means a rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of an assessment in respect of the yearly value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument, requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

(a) The duties under Part I. were the "Duties on Land Values," viz. Increment Value Duty (ss. 1—12), Reversion Duty (ss. 13—15), Undeveloped Land Duty (ss. 16—19), and Mineral Rights Duty (ss. 20—24 (16 Halsbury's Statutes 747—749)). All these duties, except the Mineral Rights Duty, ceased to be chargeable from 4th August, 1920 (Finance Act, 1920, s. 57 (*op. cit.* 857)).

(b) The remainder of this sub-section was repealed by s. 64 (3) and Sched. IV., Finance Act, 1920.

* * * * *

PART VI.

CUSTOMS AND EXCISE OTHER THAN LIQUOR LICENCE DUTIES.

* * * * *

85. (a) [*Exemptions and allowances in respect of the duty on motor spirit.*]

(a) Repealed as from 1st July, 1921, by s. 64 (3) and Sched. IV., Finance Act, 1920. The customs duty on motor spirit was repealed by s. 12 of Finance Act, 1920.

86. (a) [*Duty on licences for motor cars.*]

(a) Repealed as from 1st January, 1921, by s. 64 (3) and Schedule IV., Finance Act, 1920. The excise duty on licences for mechanically propelled vehicles was repealed by s. 12 of Finance Act, 1920, and fresh duties were imposed by s. 13 of the same Act (16 Halsbury's Statutes 852). See, however, the Roads Act, 1920, Vol. V., *post*.

PART VII.

PROVISIONS AS TO PAYMENTS TO LOCAL AUTHORITIES AND TO ROAD IMPROVEMENT ACCOUNT.

87.—(1) All payments made in pursuance of conditions attached by licensing justices to the grant of new licences under section four of the Licensing Act, 1904 (a), shall, notwithstanding anything in that or any other Act, be paid into the Exchequer. Payments in respect of monopoly value to go to Exchequer.

(a) See also s. 14 (3) of the Licensing (Consolidation) Act, 1910 (9 Halsbury's Statutes 995).

Section 88.

Payments into local taxation account in respect of liquor licences and provisions as to duties on motor car licences.

88.—(1) *For the purpose of subsection (3) of section seventeen of the Finance Act, 1907 (which makes provision with respect to the method of calculating proceeds of duties in the event of any alteration of the rate of duties), the proceeds of the duties on the licences for the sale of intoxicating liquor and on licences for motor cars imposed by this Act shall, so far as respects the sums to be paid into any local taxation account out of the Consolidated Fund in respect thereof, be deemed notwithstanding anything in that subsection to be the amount of the proceeds of the duties on those licences during the year ending the thirty-first day of March nineteen hundred and nine (a).*

(2) Notwithstanding the proviso to subsection (4) of section six of the Finance Act, 1908 (b), the duties on licences for motor cars in England and Wales shall continue to be duties to which that section applies, but any sum by which the proceeds of those duties levied in any financial year by the council of any county or county borough exceed the amount of the proceeds of those duties certified by the Local Government Board to have been collected in that county or county borough during the year ending the thirty-first day of March nineteen hundred and nine shall be paid into the Exchequer, and a council shall be entitled to be paid any sum by which the proceeds of those duties levied by them in any year are less than that amount, and the sums so to be paid shall be charged on and paid out of the Consolidated Fund or the growing produce thereof.

(3) *Any reference in this section to duties on licences for motor cars or to the proceeds of those duties shall be construed to be a reference only to the duties on the licences which are affected by this Act (c).*

(a) The words "and on licences for motor cars" were repealed by the Revenue Act, 1911, *post*, p. 5117. As to such duties, see next sub-section. The remainder of the sub-section and s. 17 of the Finance Act, 1907, referred to therein were repealed by the L. G. A., 1929, Sched. XII., Pt. VI., Vol. V. and 10 Halsbury's Statutes 1017, consequent upon the winding up of the local taxation accounts, and the discontinuance of the grants out of the Consolidated Fund by *ibid.*, s. 85 and Sched. II., Vol. V. and 10 Halsbury's Statutes 937, 979.

(b) See this sub-section, *ante*, p. 5066. By virtue of s. 18 (1) of the Revenue Act, 1911, *post*, p. 5117, the present sub-section now applies to the duties on all carriage licences (including motor cars), and stereotypes the portion thereof applicable to local purposes.

(c) Repealed by the Revenue Act, 1911, *post*, p. 5117.

* * * * *

Payment of duties on motor spirit and motor car licences to road improvement account.

90.—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum (in this Act referred to as the road improvement grant) (a) equal to the net proceeds of the duties on motor spirit and the net proceeds of the duties on licences for motor cars which are affected by this Act.

(2) The road improvement grant shall be carried to a separate account to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury with respect to accounts and accumulations of moneys standing to the account, be administered and applied in manner provided by the Development and Road Improvement Funds Act, 1909.

(3) The expression "the net proceeds of the duties" means the amount of those duties paid into the Exchequer, after deducting such sums as are certified by the Commissioners to be the cost of collecting the duties, and after deducting in the case of duties payable on licences for motor cars any sum which is payable to any local taxation account in respect of the proceeds of those duties, or to any council in respect of any deficiency in the proceeds of those duties.

(a) This is now the Road Fund. See the Development and Road Improvement Funds Act, 1909, *ante*, p. 5105, as amended by the Roads Act, 1920, and notes thereto, Vol. V., *post*. By s. 18 (3) of the Revenue Act, 1911, *post*, p. 5117, the provisions of this section were extended to the duties on carriage licences generally.

91. (a)—(1) There shall be charged on and paid out of the Consolidated Fund or the growing produce thereof a sum equal to one-half of the net proceeds of the duties on land values under Part I. of this Act (including mineral rights duties). **Section 91.**

—
Payment of half the proceeds of the duties on land values for benefit of local authorities.

(2) The sums so charged shall be carried to a separate account, to be established under regulations made by the Treasury for the purpose, and, subject to such regulations as may be made by the Treasury in respect of accounts, audit, and accumulation of moneys standing to the account, be appropriated for the benefit of local authorities in the United Kingdom in such manner as Parliament may hereafter determine.

(a) The operation of this section is suspended until Parliament otherwise determines: see Revenue Act, 1911, s. 16, *infra*, as amended by s. 16, Finance Act, 1914 (Sess. 2). The Act of 1911, *infra*, repealed it, but such repeal was annulled by s. 21 of the Finance Act, 1911, *post*, p. 5120.

* * * * *

THE REVENUE ACT, 1911.

(1 GEO. 5, c. 2.)

PART V.

PROVISIONS AS TO PAYMENTS FOR LOCAL AUTHORITIES.

16. Section ninety-one (a) of the principal Act (which provides for the payment of half the proceeds of the duties on land values for the benefit of local authorities) shall be suspended in its operation as from the date of the principal Act until Parliament shall otherwise determine (b).

Repeal of s. 91 of 10 Edw. 7, c. 8.

(a) See this section, *supra*.

(b) The closing words of this section which limited the suspension to 31st March, 1914, were repealed by s. 16 of Finance Act, 1914 (Sess. 2). The next section which dealt with certain payments into the Local Taxation Account was repealed by the L. G. A., 1929, Sched. XII., Pt. VI., Vol. V. and 10 Halsbury's Statutes 1017, see note (a) to s. 88 of the Finance (1909-10) Act, 1910, *ante*, p. 5116.

* * * * *

18.—(1) So much of subsection (2) of section eighty-eight (a) of the principal Act as provides for the payment of a part of the proceeds of the duties on licences for motor cars in England and Wales into the Exchequer, and for the payment out of the Consolidated Fund to the council of a county or county borough of any deficiency in the proceeds of those duties, shall extend to the proceeds of the duties on all carriage licences (whether licences for motor cars or not), and that provision shall be construed accordingly.

Extension of s. 88 of 10 Edw. 7, c. 8, to all carriage licences.

(2) [*Scotland.*]

(3) Section ninety (b) of the principal Act (which relates to the payment out of the Consolidated Fund of a sum equal to the net proceeds of the duties on motor spirit and motor car licences as the road improvement grant) shall be construed as if a reference to the duties on carriage licences were substituted in that section for the references to the duties on licences for motor cars which were affected by that Act and to the duties payable on licences for motor cars.

(4) In this section, the expression "duties on carriage licences" means the duties on all licences for carriages, including any duty charged under subsection (1) of section eight of the Locomotives on Highways Act, 1896, and any duty charged under section eighty-six of the principal Act in respect of motor cars.

59 & 60 Vict. c. 36.

(a) See this sub-section, *ante*, p. 5116.

(b) See this section, *ante*, p. 5116.

Section 20.

Repeal, construction, and short title.

20.—(1) *The enactments specified in the Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule (a).*

(a) This sub-section and the Schedule referred to therein were repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

SCHEDULE.

ENACTMENTS REPEALED.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
10 Edw. 7, c. 8.	<i>Finance (1909–10) Act, 1910.</i>	<i>Section fourteen, sub-section (3); section forty-four, sub-section (1); the words "and on licences for motor cars" in sub-section (1) of section eighty-eight; sub-section (3) of section eighty-eight; and section ninety-one (a).</i>

(a) The repeal of s. 91, *ante*, p. 5117, was annulled by the Finance Act, 1911, s. 21, *post*, p. 5120.

THE MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1911.

(1 & 2 GEO. 5, c. 7.)

An Act to amend the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (a). [18th August, 1911.]

Certain false statements concerning a candidate to be an illegal practice.
Injunction against person making false statement.
47 & 48 Vict. c. 70.

1.—(1) Any person who, or the directors of any body or association corporate which, before or during any municipal election, shall, for the purpose of affecting the return of any candidate at such election, make or publish any false statement of fact in relation to the personal character (b) or conduct of such candidate shall be guilty of an illegal practice within the meaning of the provisions of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (c), and shall be subject to all the penalties for and consequences of committing an illegal practice in the said Act mentioned, and the said Act shall be taken to be amended as if the illegal practice defined by this Act had been contained therein.

(2) No person shall be deemed to be guilty of such illegal practice if he can show that he had reasonable grounds for believing and did believe, the statement made by him to be true.

(3) Any person who shall make or publish any false statement of fact as aforesaid may be restrained by interim or perpetual injunction by the High Court of Justice from any repetition of such false statement or any false statement of a similar character in relation to such candidate, and, for the purpose of granting an interim injunction, *prima facie* proof of the falsity of the statement shall be sufficient (d).

(4) A candidate (e) shall not be liable nor shall be subject to any incapacity, nor shall his election be avoided, for any illegal practice under this Act committed by his agent, unless it can be shown that the candidate has authorised or consented to the committing of such illegal practice, or has paid for the circulation of the false statement constituting the illegal practice, or unless upon the hearing of an election petition the election court shall find and report

that the election of such candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

**Note to
Section 1.**

(a) This Act is applied to elections of urban and rural district councillors conducted under the L. G. A., 1933, *ante*, p. 735, and the rules made thereunder, see s. 2, *infra*.

(b) A statement that a candidate is a "Communist" is not a statement as to personal character within this section (*Burns v. Associated Newspapers, Ltd.* (1925), 89 J. P. 205; 42 T. L. R. 37; Digest Supp.).

(c) See this Act, *ante*, p. 4671; see s. 7, *ante*, p. 4674, thereof for the punishment on conviction for an illegal practice.

(d) Where justification is pleaded, an interlocutory injunction will not be granted unless defendants have no reasonable prospect of success at the trial (*Burns v. Associated Newspapers, Ltd., supra*).

(e) As to the liability of a candidate, see ss. 8, 19, of the principal Act, *ante*, pp. 4674, 4678.

2. This Act may be cited as the Municipal Elections (Corrupt and Illegal Practices) Act, 1911, and shall be construed as one with the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and that Act and this Act may be cited together as the Municipal Elections Corrupt and Illegal Practices Acts, 1884 and 1911.

Short title and
construction.

THE PUBLIC WORKS LOANS ACT, 1911.

(1 & 2 GEO. 5, c. 17.)

* * * * *

4. In section eleven (a) of the Public Works Loans Act, 1875, as amended by section five of the Public Works Loans Act, 1898, fifty years shall be substituted for thirty years as the maximum period for the repayment of a loan in a case where no period for repayment is specified by the special Act relating to the loan.

Amendment
of s. 11 of
38 & 39 Vict.
c. 89, as to
term for
repayment
of loans.
61 & 62 Vict.
c. 54.

(a) See this section, *ante*, p. 4534. The period had already been extended from twenty years, as originally enacted, to thirty years by s. 5 of the Public Works Loans Act, 1898 (12 Halsbury's Statutes 299), which is now omitted from this volume as spent.

5. This Act may be cited as the Public Works Loans Act, 1911.

Short title.

THE FINANCE ACT, 1911.

(1 & 2 GEO. 5, c. 48.)

* * * * *

11. (a) [*Exemption of motor cars used for fire brigade purposes from duty on licences for motor cars.*]

(a) Repealed by s. 64 and Sched. IV., Finance Act, 1920.

12. (a) [*Exemption for motor fire engines, &c., in respect of the duty on motor spirit.*]

(a) Repealed by s. 64 and Sched. IV., Finance Act, 1920 (16 Halsbury's Statutes 859). As to the exemption of fire engines, ambulances, and other vehicles used by local authorities from the duties now in force, see s. 13 (4), Finance Act, 1920 (*op. cit.* 853).

* * * * *

PART IV.

NATIONAL DEBT.

16.—(1) The old sinking fund for the financial year ending the thirty-first day of March nineteen hundred and eleven, as calculated under section nineteen of the Revenue Act, 1911, shall, notwithstanding anything in the Sinking Fund Act, 1875—

Partial appli-
cation of sur-
plus for de-
velopment fund
and sanatoria.
38 & 39 Vict.
c. 45.

Section 16.

9 Edw. 7, c. 47.

- (a) to the extent of one million five hundred thousand pounds, be issued and paid by the Treasury at such times as they direct to the development fund under the Development and Road Improvement Funds Act, 1909 (a), in lieu of the sums to be issued out of the consolidated fund under subsection (2) of section two of that Act in the years ending the thirty-first day of March nineteen hundred and thirteen, nineteen hundred and fourteen, and nineteen hundred and fifteen respectively; and
- (b) to the extent of one million five hundred thousand pounds, be issued by the Treasury at such times as they direct, and carried by the Treasury to a separate account, and made available in such manner as Parliament may determine for the purposes of the provision of, or making grants in aid to, sanatoria and other institutions (b) for the treatment of tuberculosis, or such other diseases as the [Minister of Health], or as respects Scotland the Local Government Board for Scotland, or as respects Ireland the Local Government Board for Ireland, with the approval of the Treasury, may appoint; and

(a) See this Act as amended, *ante*, p. 5105.(b) See the National Insurance Act, 1911, s. 64, *post*, p. 5124.

* * * * *

Amendment of
schedule to
Revenue Act,
1911.

1 Geo. 5, c. 2.

21. The Revenue Act, 1911, shall be read as if section ninety-one of the Finance (1909-10) Act, 1910, were not included in the schedule of enactments repealed (a).

(a) But s. 91, though not repealed, is at present suspended, see note thereto, *ante*, p. 5117.Repeal con-
struction, and
short title.

22.—(1) *The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule (a).*

(a) This sub-section and the Schedule referred to therein were repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Section 22.**SCHEDULE.****ENACTMENTS REPEALED.**

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
9 Edw. 7, c. 47.	<i>The Development and Road Improvement Funds Act, 1909.</i>	<i>Sub-section (2) of section two, as from the thirty-first day of March nineteen hundred and twelve (a).</i>

(a) See note to this section, *ante*, p. 5107.**COAL MINES ACT, 1911 (a).**

(1 & 2 GEO. 5, c. 50.)

An Act to consolidate and amend the Law relating to Coal Mines and certain other mines.
[16th December, 1911.]

APPLICATION OF ACT.Application of
Act.

1. The mines to which this Act applies (b) are mines of coal, mines of stratified ironstone, mines of shale, and mines of fire-clay; and in this Act the expression "mine," unless the context otherwise requires, means a mine to which this Act applies.

**Note to
Section 1.**

(a) This Act repealed the provisions of the Coal Mines Regulation Act, 1887 (12 Halsbury's Statutes 49), as to the matters dealt with in the text.

(b) Shafts of abandoned mines of a kind to which this Act does not apply are dealt with by the Metalliferous Mines Regulation Act, 1872, *ante*, p. 4321; and reference should be made to the cases cited in the notes thereto.

* * * * *

26.—(1) Where any mine (a) is abandoned or the working thereof discontinued (b), at whatever time the abandonment or discontinuance occurred, it shall be the duty of the owner (a) thereof, and of every other person interested in the minerals of the mine, to cause the top or entrance of every (c) shaft and outlet to be kept surrounded by a structure of a permanent character sufficient to prevent accidents :

Fencing
in case of
abandoned
mine.

Provided that—

(i) Subject to any contract to the contrary, the owner of the mine shall, as between himself and any other person interested in the minerals of the mine, be liable to carry this section into effect, and to pay any costs, charges and expenses incurred by any other person interested in the minerals of the mine in carrying this section into effect :

(ii) Nothing in this section shall exempt any person from any liability under any other Act, or otherwise.

(2) No person shall be precluded by any agreement or otherwise from doing, or be liable to any injunction, damages, penalty, or forfeiture in respect of, such acts as may be necessary in order to comply with the provisions of this section.

(3) Any shaft or outlet which is not kept surrounded by a structure as required by this section shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875 (d).

38 & 39 Vict.
c. 55.

(a) See definitions in s. 122, *infra*.

(b) Where a shaft is abandoned or working thereof discontinued, notice must be given to the Inspector of Mines (s. 19 (12 Halsbury's Statutes 91)). S. 37 (*op. cit.* 104) deals with the fencing of shafts not abandoned or permanently out of use.

(c) This provision applies to all shafts and outlets and is no longer restricted as under the repealed Act to such as are within fifty yards of a highway, road, footpath, or place of public resort, or are in open or uninclosed land.

(d) For the effect of this provision see note (a) to the Quarry Fencing Act, 1887, *ante*, p. 4696. There appears to be no longer any penalty for mere neglect to fence before service of a "nuisance" notice.

* * * * *

PART III.

PROVISIONS AS TO HEALTH.

76. General regulations shall be made under this Act with respect to the provision and use of sanitary conveniences in mines, both above and below ground (a).

Provisions as
to sanitary
conveniences.

(a) As to this section, see note to s. 46 of the P. H. A., 1936, *ante*, p. 145. The general regulations referred to are made by the Home Secretary (s. 86).

* * * * *

122. In this Act, unless the context otherwise requires,—

Interpretation

"Mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine, but does not include any part of such premises on which any manufacturing process is carried on other than a process ancillary to the getting, dressing or preparation for sale of minerals :

Section 122.

“Owner,” when used in relation to any mine, means any person or body corporate who is the immediate proprietor or lessee, or occupier of any mine, or of any part thereof, and in the case of a mine the business whereof is carried on by a liquidator or receiver includes such liquidator or receiver, but does not include a person or body corporate who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine, or any part thereof, shall be subject to this Act in like manner as if he were an owner, but so as not to exempt the owner from any liability :

THE RAG FLOCK ACT, 1911.

(1 & 2 GEO. 5, c. 52.)

An Act to prohibit the sale and use for the purpose of the manufacture of certain articles of unclean Flock manufactured from Rags.

[16th December, 1911.]

Prohibition of sale and use for the purpose of manufacture of certain articles of unclean flock manufactured from rags.

1.—(1) It shall not be lawful for any person to sell or have in his possession for sale flock manufactured from rags (a) or to use for the purpose of making (b) any article of upholstery, cushions, or bedding flock manufactured from rags or to have in his possession flock manufactured from rags intended to be used for any such purpose, unless the flock conforms to such standard of cleanliness as may be prescribed by regulations (c) to be made by the [Minister of Health], and, if any person sells or uses or has in his possession flock in contravention of this Act, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, ten pounds, or in the case of a second or subsequent offence fifty pounds.

56 & 57 Vict. c. 66.

(2) All regulations made by the [Minister of Health] under this Act shall be laid before Parliament as soon as may be after they are made, and the Rules Publication Act, 1893 (d), shall apply to such regulations as if they were statutory rules within the meaning of section one of that Act.

(3) Where, in any proceedings against a person charged with an offence under this Act, it is proved that an offence under this Act has been committed, but that the person charged with the offence—

(a) purchased the flock in respect of which the offence was committed from a person resident within the United Kingdom who sold the flock under a warranty that it complied with the prescribed standard of cleanliness; and

(b) took reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in the warranty; the person so charged shall be entitled upon an information duly laid by him to have the person who gave the warranty brought before the court, and that person may be summarily convicted of the offence, and the person originally charged shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, also be liable to pay any costs incidental to the proceedings.

(4) Where a person is charged with having flock in his possession in contravention of this Act any flock proved in the proceedings to have been found in his possession shall be deemed to be intended for sale or for use in the manufacture of such articles as aforesaid, unless the contrary is proved.

Section 1.

(5) It shall be the duty of a sanitary authority to enforce the provisions of this Act within their district, and for that purpose the medical officer of health, the inspector of nuisances or sanitary inspector, or any other officer whom the sanitary authority may appoint, shall have power, if so authorised (e) by the sanitary authority, to institute and carry on any proceedings which the sanitary authority is authorised to institute and carry on under this Act, and to enter at all reasonable times any premises in which he has reasonable cause to believe that an offence under this Act is being committed, and to examine and take samples for the purposes of analysis of any flock found therein:

Provided that, where a sample is so taken, the occupier of the premises may require the officer taking the sample to divide it into two parts and to mark, seal, and deliver to him one part.

If any person wilfully obstructs any such officer in the execution of his powers under this section, he shall be liable on summary conviction to a fine not exceeding five pounds.

(6) The expenses of sanitary authorities under this Act shall be defrayed—

(a) in the case of the mayor, aldermen and commons of the city of London in common council assembled, out of the general rate ;

(b) in the case of the council of a metropolitan borough, as part of the expenses incurred by the council in the execution of the Public Health (London) Act, 1891 ;

54 & 55 Vict.
c. 76.

(c) [*Repealed by the L. G. A., 1933, ante, p. 735.*]

(7) All fines imposed in any proceedings instituted by a sanitary authority in pursuance of their powers and duties under this Act shall be paid to the sanitary authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

(8), (9) [*Application to Scotland and Ireland.*]

(a) Flock consisting of jute refuse, composed partly of waste fluff from the machines, and partly of cuttings from woven jute fabric trimmed away in manufacture, was held to be within the Act (*Cooper v. Swift*, [1914] 1 K. B. 253 ; 78 J. P. 57 ; 39 Digest 463, 891). This case was followed in *Bainforth v. Chadburn*, [1927] 1 K. B. 663 ; 91 J. P. 21 ; 39 Digest 463, 892, where it was held that the word "rags" in the section was not limited to rags which have become polluted through association with human or animal life, but included flock made from new and uncontaminated material.

In order to remove doubts, the Rag Flock Act (1911) Amendment Act, 1928, Vol. V. and 13 Halsbury's Statutes 1193, was passed, which declares that the expression "flock manufactured from rags" means "flock which has been produced wholly or partly by tearing up woven or knitted or felted materials whether old or new, but does not include flock obtained wholly in the processes of the scouring and finishing of newly woven or newly knitted or newly felted fabrics."

(b) The restuffing of a mattress with flock—the flock being taken from the same cover and put back again without any addition—is not the "making any article of bedding" within the meaning of this sub-section (*Gamble v. Jordan*, [1913] 3 K. B. 149 ; 77 J. P. 269 ; 38 Digest 221, 539). But putting a new cover in place of an old one on a mattress containing rag flock is "making any article of bedding" within the sub-section (*Guildford Corporation v. Brown*, [1915] 1 K. B. 256 ; 79 J. P. 143 ; 38 Digest 222, 540). The sub-section does not apply to the mere sale of second-hand articles which contain rag flock (*Cooper v. Evan Cook's Depositories, Ltd.*, [1915] 1 K. B. 344 ; 79 J. P. 159 ; 38 Digest 222, 542).

(c) Regulations, citable as "The Rag Flock Regulations, 1912," were issued on June 8th, 1912, and provide as follows:—"Flock shall be deemed to conform to the standard of cleanliness for the purposes of sub-s. (1) of section 1 of the Act when the amount of soluble chlorine, in the form of chlorides, removed by thorough washing with distilled water at a temperature not exceeding 25 degrees Centigrade from not less than 40 grammes of a well-mixed sample of flock, does not exceed 30 parts of chlorine in 100,000 parts of the flock."

(d) In the case of rules to which s. 1 of the Rules Publication Act, 1893 (18 Halsbury's Statutes 1016), applies, notice of the intention to make rules and of the place where copies of the draft rules may be obtained must be published in the Gazette at least forty days before the rules are made, and during those forty days any public body may make repre-

**Note to
Section 1.**

sentations or suggestions. There is, however, power to make provisional rules without such notice in cases of urgency.

(e) Presumably a general authority will suffice. It should be by resolution (*cf. Duchesne v. Finch* (1912), 76 J. P. 377; 13 Digest 411, 1308; *Watt v. Hegarty* (1913), 47 Ir. L. T. 86).

Short title and
commencement.

2. This Act may be cited as the Rag Flock Act, 1911, and shall come into operation on the first day of July nineteen hundred and twelve.

THE NATIONAL INSURANCE ACT, 1911.

(1 & 2 GEO. 5, c. 55.)

An Act to provide for Insurance against Loss of Health and for the Prevention and Cure of Sickness and for Insurance against Unemployment and for purposes incidental thereto (a). [16th December, 1911.]

(a) This Act was for the most part repealed by the National Health Insurance Act, 1924 (20 Halsbury's Statutes 470), which in its turn has been repealed by the National Health Insurance Act, 1936, Vol. V. and 29 Halsbury's Statutes 1064. The only provision unrepealed and pertinent to this work is s. 64.

* * * * *

SUPPLEMENTARY PROVISIONS.

Provision of
sanatoria, etc.

64 (a).—(1) If under any other Act of the present session any sum is made available for the purposes of the provision of or making grants in aid to sanatoria and other institutions for the treatment of tuberculosis or such other diseases as the Local Government Board (b) with the approval of the Treasury may appoint, such sum shall be distributed by the Local Government Board (b) with the consent of the Treasury in making grants for those purposes, and the Treasury before giving their consent shall consult with the Insurance Commissioners :

Provided that such sum shall be apportioned between England, Wales, Scotland, and Ireland in proportion to their respective populations ascertained in accordance with the returns of the census taken in the year nineteen hundred and eleven.

(2) If any such grant is made to a county council, the Local Government Board (b) may authorise the county council to provide any such institution, and, whereso authorised, the county council shall have power to erect buildings and to manage and maintain the institution and for that purpose to enter into agreements and make arrangements with Insurance Committees and other authorities and persons, and to do all such things as may be necessary for the purposes aforesaid, and any expenses of the county council, so far as not defrayed out of the grant, shall be defrayed out of the county fund as expenses for general county purposes, or, if the order of the Local Government Board (b) so directs, as expenses for special county purposes charged on such part of the county as may be provided by the order.

(3) For the purpose of facilitating co-operation amongst county councils, county borough councils, and other local authorities (not being Poor Law authorities) for the provision of such sanatoria and other institutions as aforesaid, the Local Government Board (b) may by order make such provisions as appear to them necessary or expedient, by the constitution of joint committees, joint boards, or otherwise, for the joint exercise by such councils and authorities of their powers in relation thereto, and any such order may provide how, in what proportions, and out of what funds or rates the expenses of providing such institutions, so far as they are not defrayed out of grants under this section, are to be defrayed, and may contain such consequential, incidental, and supplemental provisions as may appear necessary for the

purposes of the order, and an order so made shall be binding and conclusive in respect of the matters to which it relates. **Section 64.**

(4) (c).

(a) See the Finance Act, 1911, s. 16 (1) (b), *ante*, p. 5119, and the P. H. Act, 1936, ss. 171—173, *ante*, pp. 438—441.

(b) Now the Minister of Health, Ministry of Health Act, 1919, *post*, p. 5191.

(c) Sub-s. (4) was repealed by National Health Insurance Act, 1920, Sched. IV., Part II.

* * * * *

THE SHOPS ACT, 1912.

(2 GEO. 5, c. 3.)

An Act to consolidate the Shops Regulation Acts, 1892 to 1911 (a)

[29th March, 1912.]

Conditions of Employment.

1.—(1) On at least one week day in each week (c) a shop assistant (c) shall not be employed about (d) the business of a shop (d) after half-past one o'clock in the afternoon (e) :

Provided that this provision shall not apply to the week preceding a bank holiday (f) if the shop assistant is not employed on the bank holiday, and if on one week day in the following week in addition to the bank holiday the employment of the shop assistant ceases not later than half-past one o'clock (e) in the afternoon (e). Hour of employment and meal times (b).

(2) The occupier (g) of a shop shall fix, and shall specify in a notice in the prescribed form (h) which must be affixed in the shop in such manner (i) and at such time (j) as may be prescribed, the day of the week on which his shop assistants are not employed after half-past one o'clock (e), and may fix different days for different shop assistants.

(3) Intervals for meals shall be allowed to each shop assistant in accordance with the First Schedule (k) to this Act :

Provided that this provision shall not apply to a shop if the only persons employed as shop assistants are members of the family of the occupier of the shop, maintained by him, and dwelling in his house (l).

(4) In the case of any contravention of, or failure to comply with, the provisions of this section, the occupier (m) of the shop shall be guilty of an offence against this Act, and shall be liable to a fine (n) not exceeding :—

(a) in the case of a first offence, one pound ;

(b) in the case of a second offence, five pounds ; and

(c) in the case of a third or subsequent offence, ten pounds—

unless, in the case of a shop assistant employed after half-past one o'clock in contravention of this section, he proves that the shop assistant was employed merely for the purpose of serving a customer whom he was serving at the time, or, where the time of the closing of the shop was also half-past one o'clock (o), that the shop assistant was employed merely for the purpose of serving customers who were in the shop at that time.

(a) See also the Shops Act, 1913, *post*, p. 5140, the Shops (Hours of Closing) Act, 1928, Vol. V. and 8 Halsbury's Statutes 647, the Shops Act, 1934, Vol. V. and 27 Halsbury's Statutes 226, the Shops Act, 1936, Vol. V. and 29 Halsbury's Statutes 149, and the Shops (Sunday Trading Restrictions) Act, 1936, Vol. V. and 29 Halsbury's Statutes 152. Under the 1928 Act hours of closing of general application were prescribed, subject to the right of local authorities to vary these hours within limits prescribed by the Act.

These Acts are to be construed together and may be cited as the Shops Acts, 1912 to 1936 (see s. 16 of the 1936 Act, Vol. V. and 29 Halsbury's Statutes 164). Reference should be made to the Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930 ; 23 Halsbury's Statutes 123, and the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936 ; 29 Halsbury's Statutes 150.

Note to Section 1.

(b) This section substantially re-enacts ss. 1, 8 (1), 13 (2), Sched. I., of the Shops Act, 1911, which never came into operation, being repealed by s. 22, *post*, p. 5138. There had been no earlier legislation on the subject.

Generally speaking, this section does not, if the employer so elects and takes certain steps, apply to shop assistants employed in the sale of "refreshments"; as to them, see the Shops Act, 1913, *post*, p. 5140. With one other exception, *viz.*, under certain conditions and for limited periods in holiday resorts (s. 11, *post*, p. 5134), sub-s. (1) applies to the shop assistants in every shop, even though the shop itself may be one which need not be closed for a weekly half-holiday, and even though the assistants be members of the shopkeeper's family. The shopkeeper fixes the day (which may not be Sunday) on which each assistant is to have his half-holiday; he may fix different days for different assistants, and may vary the days fixed as often as he likes, so long as he complies with sub-s. (2) as to giving notice thereof.

(c) See definition in s. 19 (1), *post*, p. 5137. A firm gave no half-holiday in the week ending December 21st, but gave whole holidays in the following week on Christmas Day and Boxing Day. It was held that no offence was committed, Christmas Day being a weekday on which (in addition to one Bank Holiday—Boxing Day) the assistant was not employed after 1.30 p.m. (*Todd, Burns & Co., Ltd. v. Dublin Corporation*, [1913] 2 I. R. 397; 47 I. L. T. 157; 24 Digest 933, f).

(d) "Employed about" means "busy about" or "engaged in": therefore where a bookstall assistant, though ordered to take his weekly half-holiday on a certain afternoon, busied himself on that afternoon about the business of the bookstall, the employers, who had taken no steps under s. 14 (3), *post*, p. 5136, were held liable (*Ward v. W. H. Smith & Sons*, [1913] 3 K. B. 154; 77 J. P. 370; 24 Digest 932, 215). The appellant was manager of a shop at B. belonging to a company which owned many similar shops in different parts of the country. The appellant employed his shop assistants in consideration of extra remuneration to distribute certain handbills in the neighbourhood in their spare time. The handbills consisted of an advertisement of the company's margarine, but contained no mention of their particular shop at B. The assistants distributed the handbills to passers-by in the streets and at houses in the neighbourhood on the afternoon of the day of the week fixed under the Act for the weekly half-holiday for that shop. It was held that in order to constitute a breach of the above section it was not necessary that the handbills should specially refer to the shop at B., and that the assistants delivering them were not the less employed about the business of that shop because they were also thereby advertising the business of the company's other shops; and further that the employment of the assistants to do the work in their spare time generally included an employment to do it on the half-holiday afternoon which was their principal spare time (*George v. James*, [1914] 1 K. B. 278; 78 J. P. 156; 24 Digest 929, 200).

Where an employer has two shops an assistant at one shop cannot lawfully be employed during the time when one shop is closed under this section, at the other shop (*London C. C. v. Weitman*, [1922] 1 K. B. 153; 86 J. P. 4; 24 Digest 929, 201). It is an illegal contract to agree for wages in lieu of statutory holidays (*Wylie v. Lawrence Wright Music Co.* (1932), 96 J. P. 156; Digest Supp.).

(e) For "half-past one o'clock" read "one o'clock" in the case of young persons employed in hotels, public entertainments or bathing places (Young Persons (Employment) Act, 1938, s. 8 (2) (a), Vol. V. and 31 Halsbury's Statutes 377).

(f) An employer may fix an assistant's weekly half-holiday to coincide with a bank holiday. If, however, he fixes it for another day in that week, and if he does not employ the assistant at all on the bank holiday, he need not give him a half-holiday in the preceding week.

(g) A brewery company owned a public-house which was in charge of a manager who held the licence. The Liverpool stipendiary convicted the company for not as "occupiers" specifying in a notice the day on which a "shop assistant"—*i.e.*, the licence-holder—was to take his half-holiday. The licence-holder had signed and posted a notice dealing with all other persons employed on the premises (1913, 77 J. P. N. 402). In a similar case, *Hancock & Co. v. Nicholas* (18th November, 1925, unreported), a Divisional Court upheld the conviction.

(h) For the prescribed form of notice, see Regulation No. 1 and Form I., *ante*, p. 3728.

(i) As to the prescribed manner of affixing, see Regulation No. 2, *ante*, p. 3723.

(j) The employer may vary the day of his assistants' weekly half-holiday as often as he likes; but notice must be affixed before assistants to whom it relates cease work on the Saturday preceding the week during which it is to have effect; see Regulation 3, *ante*, p. 3723.

(k) See this Schedule, *post*, p. 5139.

(l) If any assistant is not a member of the family, the provision applies to all assistants, whether members or not.

(m) As to the liability of other persons, and as to an occupier shifting the liability on to some one else, see s. 14 (2), (3), *post*, p. 5136. As to a limited company being an occupier, see note (t) to s. 4, *post*, p. 5130.

(n) As to the recovery of penalties, see s. 14 (1), *post*, p. 5136.

(o) As it may be under s. 4 (4), *post*, p. 5127. See also note (e), *supra*.

**Note to
Section 1.**

2. [Hours of employment of young persons (a).]

(a) Repealed by Shops Act, 1934, Vol. V. and 27 Halsbury's Statutes 226.

3.—(1) In all rooms of a shop (b) where female shop-assistants (b) are employed in the serving of customers, the occupier of the shop shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and such seats shall be in the proportion of not less than one seat to every three female shop-assistants employed in each room [and it shall be the duty of the occupier of the shop to permit the female shop assistants so employed to make use of such seats whenever the use thereof does not interfere with their work, and the occupier shall in the prescribed manner and in the prescribed form give notice informing such shop assistants that they are intended to do so (c).]

Seats for
female shop
assistants (n).

(2) Any person (d) failing to comply with the provisions of this section shall be guilty of an offence against this Act, and liable for a first offence to a fine (e) not exceeding three pounds, and for a subsequent offence to a fine not less than one pound and not exceeding five pounds.

(a) This section reproduces in slightly varied language the provisions of the Seats for Shop Assistants Act, 1899, repealed by s. 22, *post*, p. 5138.

(b) See definitions in s. 19, *post*, p. 5137.

(c) Words in square brackets added by the Shops Act, 1934, s. 12, Vol. V. and 27 Halsbury's Statutes 236.

(d) See note (m) to s. 1, *ante*, p. 5126.

(e) As to the recovery of penalties, see s. 14 (1), *post*, p. 5136.

Closing of Shops.

4.—(1) Every shop (a) shall, save as otherwise provided by this Act (b), be closed for the serving of customers (c) not later than one o'clock in the afternoon of one week day in every week (a).

Closing of
shops on
weekly half-
holiday.

(2) The local authority (d) may (e), by order (f), fix the day on which a shop is to be so closed (in this Act referred to as "the weekly half-holiday"), and any such order may either fix the same day for all shops, or may fix—

(a) different days for different classes of shops (g); or

(b) different days for different parts of the district; or

(c) different days for different periods of the year:

Provided that—

(i) where the day fixed is a day other than Saturday (h), the order shall (i) provide for enabling Saturday (h) to be substituted for such other day; and

(ii) where the day fixed is Saturday (h), the order shall (i) provide for enabling some other day specified (j) in the order to be substituted for Saturday (h);

as respects any shop in which notice (k) to that effect is affixed by the occupier, and that no such order shall be made unless the local authority, after making such inquiry as may be prescribed (l), are satisfied that the occupiers of a majority of each of the several classes of shops affected by the order approve the order (m).

(3) Unless and until such an order is made affecting a shop, the weekly half-holiday as respects the shop shall be such day as the occupier may specify in a notice affixed in the shop, but it shall not be lawful for the occupier of the shop to change the day oftener than once in any period of three months (n).

(4) Where the local authority (d) have reason to believe that a majority of the occupiers of shops of any particular class in any area are in favour of being exempted from the provisions of this section, either wholly or by fixing

Section 4. as the closing hour instead of one o'clock some other hour not later than two o'clock, the local authority, unless they consider that the area in question is unreasonably small, shall take steps to ascertain the wishes of such occupiers, and, if they are satisfied that a majority of the occupiers of such shops are in favour of the exemption, or, in the case of a vote being taken, that at least one half of the votes recorded by the occupiers of shops within the area of the class in question are in favour of the exemption, the local authority shall make an order exempting the shops of that class within the area from the provisions of this section either wholly or to such extent as aforesaid (o).

(5) Where a shop is closed during the whole day on the occasion of a bank holiday (p), and that day is not the day fixed for the weekly half-holiday, it shall be lawful for the occupier of the shop to keep the shop open for the serving of customers after the hour at which it is required under this section to be closed either on the half-holiday immediately preceding, or on the half-holiday immediately succeeding, the bank holiday.

(6) This section shall not apply to any shop in which the only trade or business carried on is trade or business of any of the classes mentioned in the Second Schedule (q) to this Act, but the local authority may, by order (r) made and revocable in the manner hereinafter provided with respect to closing orders (s), extend the provisions of this section to shops of any class exempted under this provision if satisfied that the occupiers of at least two-thirds of the shops of that class approve the order.

(7) In the case of any contravention of or failure to comply with any of the provisions of this section, the occupier (t) of the shop shall be guilty of an offence against this Act, and shall be liable to a fine (u) not exceeding—

- (a) in the case of a first offence, one pound ;
- (b) in the case of a second offence, five pounds ; and
- (c) in the case of a third or subsequent offence, ten pounds :

Provided that the occupier of a shop shall not be guilty of an offence against this Act when a customer is served at any time at which the shop is required to be closed under this section if he proves either that the customer was in the shop before the time when the shop was required to be closed (v), or that there was reasonable ground for believing that the article supplied to the customer was required in the case of illness.

(8) Nothing in this section shall prevent customers from being served at a time when the shop in which they are sold is required to be closed with victuals, stores, or other necessities for a ship, on her arrival at or immediately before her departure from a port (x).

(a) See definition in s. 19, *post*, p. 5137 ; as regards Jewish hairdressers or barbers, this sub-section is to have effect as if it required every shop to be closed for the serving of customers not later than one o'clock in the afternoon on one day in every week other than Saturday (Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930, s. 3 (2) (b) (23 Halsbury's Statutes 124)). Where a dairyman had affixed an automatic machine to the door of his shop so that milk could be obtained by putting a penny in a slot while the shop was closed, it was held that the place where the sale of milk occurred was a shop within the meaning of the Act (*Willesden U. D. C. v. Morgan*, [1915] 1 K. B. 349 ; 79 J. P. 166 ; 24 Digest 933, 222).

(b) Certain shops are or may be exempted from this provision, see sub-ss. (4), (6), but assistants employed in them must nevertheless have a half-holiday on some week-day in every week (see s. 1, *ante*, p. 5125). There are also special provisions as to bank holidays (sub-s. (5)) and emergency sales (sub-ss. (7), (8)), and as to shops in holiday resorts (s. 11, *post*, p. 5134).

(c) This means the personal serving of customers and does not apply to trade or business carried on by means of an automatic machine (*Willesden U. D. C. v. Morgan*, *supra*). Other work (e.g., tidying up) may be done, but assistants taking their half-holiday on that day must leave by 1.30 p.m. As to sales after 1 p.m. to customers in the shop at that hour, or in cases of illness, see sub-s. (7) and s. 1 (4), *ante*, p. 5125.

(d) As to the "local authority," see s. 13, *post*, p. 5135

**Note to
Section 4.**

(e) If they do not, a shopkeeper fixes his own day (sub-s. (3)).

(f) The order does not require confirmation. As to revocation of such an order, see s. 18 (2), *post*, p. 5137. For a model form of order, see Form C, *ante*, p. 3729. An order under s. 11, *post*, exempting shopkeepers in holiday resorts from the obligation to close for the weekly half-holiday during a portion of the year should not be incorporated in an order under this sub-section. As to publication of such an order, see Regulation 22, *ante*, p. 3726. There was power to order a weekly half-holiday under the Shop Hours Act, 1904; see s. 22, *post*, p. 5138, as to how far existing orders under that Act were continued in force. The weekly half-holiday must be fixed on some day other than the "late day" under s. 1 of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 647 (s. 1 (2), *ibid.*, Vol. V. and 8 Halsbury's Statutes 647). A large firm of drapers carried on a hairdressing business in a small portion of their premises for the convenience primarily of customers shopping in the various departments of their warehouse. The whole premises were closed every Tuesday afternoon for the statutory weekly half-holiday. The local authority made an order under sub-s. (2) fixing Wednesday as the day on which hairdressers' shops should be closed for the weekly half-holiday. It was held that the hairdressing department in the warehouse in question was not a hairdresser's shop within the meaning of the Act and order, and accordingly did not require to be closed on Wednesday (*Thomson v. Somerville*, [1917] S. C. (J.) 3). This case was followed in *MacDonald v. Groundland*, [1923] S. C. (J.) 28, where a jewellery and tobacconist's shop occupied the front of the premises and a barber's shop belonging to the owner occupied a back portion of the premises.

(g) As to a butcher selling dripping on a day when provision and grocery shops (but not butchers' shops) ought to be closed, see *Schuck v. Banks*, [1914] 2 K. B. 491; 78 J. P. 229; 24 Digest 932, 218.

(h) As regards Jewish hairdressers or barbers, read "Friday" for "Saturday" (Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930, s. 3 (2) (b) (23 Halsbury's Statutes 124)).

(i) The authority cannot insert conditions fettering a shopkeeper's right to elect between two days.

(j) The alternative day must be specified, and not left to the discretion of each shopkeeper.

(k) No special form of notice has been prescribed.

(l) Regulation 4, *ante*, p. 3723, prescribes the inquiries to be made by an authority who contemplate making an order under this sub-section. As to the necessary register to be prepared, see Regulation 19, *ante*, p. 3725; as to the method of taking a vote of occupiers, see Regulation 20, *ante*, p. 3726.

(m) A person occupying more shops than one, has a vote in respect of each. As to "classes" of shops, see *Att.-Gen. v. Brighton Corporation*, *post*, p. 5131.

(n) Where no weekly half-holiday order has been made by a local authority, and the shopkeepers of a town have themselves fixed the day and specified it in notices affixed on their shops in accordance with this sub-section, a change of the day in one week and the reversion in the subsequent week back to the original closing day is a contravention of the concluding words of the section (*Owen v. Parry* (1914), 79 J. P. 64; 12 L. G. R. 1228; 24 Digest 933, 221).

(o) Such an order does not require confirmation. As to revocation of such an order, see s. 18 (2), *post*, p. 5138. No hour later than 2 p.m. can be fixed; effect can only be given to a desire for a later closing hour by complete exemption.

There is apparently no power to make an order for part only of a year; but it would be possible to make and revoke orders at the beginning and end of every "season." The sub-section does not allow a general exemption of all shops; each class of shop must be dealt with separately. As to "classes," see *Att.-Gen. v. Brighton Corporation*, *post*, p. 5131.

Semble, whether an area is "unreasonably small" is not a question only of superficial area, but may partly depend upon whether out of similar shops of the same class, some are just within and others just without the proposed boundary (*R. v. Manchester City Council, Ex parte Batty* (1912), 77 J. P. 43, *per* CHANNELL, J.; 24 Digest 931, 213).

A council after ascertaining the wishes of the shopkeepers, of whom a majority desired exemption, rescinded their former resolution approving of the area selected and consenting to grant exemption; an application for a *mandamus* directing the council to make an exemption order was refused on the ground that, if the court could grant a *mandamus*, they ought not to do so in view of the circumstances under which the two resolutions were passed (*ibid.*).

The "steps" to be taken by the authority are in their discretion; the majority required is a majority of occupiers, not of shops as under sub-s. (2); and if a vote is taken, one-half of the votes recorded (not of the persons entitled to vote) is sufficient.

(p) See definition in s. 19, *post*, p. 5137.

(q) See this Schedule, *post*, p. 5139; as to mixed businesses, see s. 10 (1), *post*, p. 5133, and *Schuck v. Banks*, *supra*; as to post office shops, see s. 12, *post*, p. 5134.

**Note to
Section 4.**

(r) It will be noticed that this does not merely declare the provisions of s. 4 to be extended to the particular class of shop, leaving the authority to make and revoke further orders under sub-s. (2), and (if necessary) sub-s. (4), as to the day and hour for closing. It appears to contemplate that the shopkeepers will ask for a particular day (and perhaps hour) and that any subsequent variation must be sanctioned by the Home Secretary. An order was made under this sub-section extending the provisions of the section to such parts of the retail businesses of pork butchers as are exempted by Sched. II., *post*, p. 5139. The respondents were confectioners and refreshment-room proprietors, and as incidental to this trade they sold, on the afternoon of the weekly half-holiday, pork sausages for consumption off the premises. It was held that they had not committed an offence against the Act (*Margerison v. Wilson* (1914), 79 J. P. 38; 112 L. T. 76; 24 Digest 932, 219). Where an order under this sub-section extended the provisions of this Act to the sale by retail of confectionery (including sweets and chocolates), it was held that the order included shops in which sweets and chocolates only were sold, and not only those in which they were sold in addition to pastry and confectionery (*Gee v. Davies* (1916), 80 J. P. 285; 85 L. J. K. B. 1431; 24 Digest 933, 226). An order extending the provisions of sub-s. (2) to the sale of tobacco and smokers' requisites does not apply to a railway bookstall at which a substantial part of the business consists in the sale of these articles (*Fyfe v. Mcnzies*, [1920] S. C. (J.) 7; 24 Digest 932, b).

(s) See ss. 5, 8, *infra*, and *post*, p. 5132.

(t) As to the liability of other persons, and as to an occupier shifting the liability on to some one else, see s. 14 (2), (3), *post*, p. 5136. A limited company can be fined as an "occupier" under this section (*Evans & Co., Ltd. v. London C. C.*, [1914] 3 K. B. 315; 78 J. P. 345; 24 Digest 932, 214).

(u) As to recovery of penalties, see s. 14 (1), *post*, p. 5136.

(v) This proviso applies only to the case of a customer who has accidentally failed to complete a purchase by the closing hour. It does not enable a shopkeeper to collect persons on the premises before the closing hour so as to carry on business after that hour by inviting them to bid for articles which they had not set out to purchase and which were not in process of being sold before the closing hour (*Salford Cattle Market Salerooms, Ltd. v. Osborne* (1923), 87 J. P. 134; 21 L. G. R. 468; 24 Digest 931, 211).

(x) In a sea-port town it will probably be advisable to insert a similar provision in closing orders under s. 5, *infra*.

Closing orders.

5 (a).—(1) An order (in this Act referred to as "a closing order") made by a local authority (b), and confirmed by the Secretary of State in manner provided by this Act, may fix the hours on the several days of the week at which, either throughout the area of the local authority or in any specified part thereof, all shops (c) or shops of any specified class are to be closed for serving customers (d).

(2) The hour fixed by a closing order (in this Act referred to as "the closing hour") shall not be earlier than seven o'clock in the evening on any day of the week.

(3) The order may—

(a) define the shops and trades to which the order applies; and

(b) authorise sales after the closing hour in cases of emergency and in such other circumstances as may be specified or indicated in the order; and

(c) contain any incidental, supplemental, or consequential provisions which may appear necessary or proper (e).

(4) (f). . . .

(5)

(a) Closing orders made under this section and in force on 3rd August, 1928, which fix earlier closing hours than those prescribed by or under the Shops (Hours of Closing) Act, 1928, Vol. V. and 8 Halsbury's Statutes 647, continue in force, but any order which fixes hours later than those so prescribed or any provision in any closing order inconsistent with the Act of 1928, has ceased to have effect. The power to make closing orders under the section in the text is now severely limited by the Act of 1928, s. 4, Vol. V. and 8 Halsbury's Statutes 648. As to orders by local authorities varying the general hours of closing prescribed by the Act of 1928 see s. 2, Vol. V. and 8 Halsbury's Statutes 648 (as to confectionery), s. 3, Vol. V. and 8 Halsbury's Statutes 648 (as to tobacco, etc.), s. 5 (Vol. V. and 8 Halsbury's Statutes 649 (as to exhibitions), and s. 6, Vol. V. and 8 Halsbury's

**Note to
Section 5.**

Statutes 649 (as to holiday resorts, etc.). Nothing in any closing order made under this Act is to prevent the serving of a customer already in the shop at the closing hour, or in case of illness or any transaction mentioned in Sched. I. of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 651 (s. 1 (3), *ibid.*, Vol. V. and 8 Halsbury's Statutes 647). Any closing order made under this Act may be suspended by the Home Secretary or by local authorities on special occasions. The power to suspend in the case of local authorities is limited to an aggregate of not more than seven days in any one year (s. 7 of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 650).

(b) See s. 13, *post*, p. 5135.

(c) See definition in s. 19, *post*, p. 5137.

(d) Under similar words in the Shop Hours Act, 1904, it was held that an authority might fix a closing hour to be observed on one or more days of the week, and need not fix one for every day (*Att.-Gen. v. Brighton Corporation* (1908), 72 J. P. 306; 77 L. J. Ch. 603; 24 Digest 931, 212). In the same case it was held in the court below, that barbers and hairdressers formed one sufficiently specific "class," and that an authority were not bound to distinguish between the different requirements of different shopkeepers in the same trade (77 L. J. Ch. 6); see also as to this point the Home Office Circular of April 4th, 1912.

Semble, when once an authority have made an order and submitted it for approval, the court will not interfere by injunction to restrain the authority from acting upon it (*Att.-Gen. v. Brighton Corporation, supra*).

See s. 22, *post*, p. 5138, as to how far existing orders made under the Shop Hours Act, 1904, were continued in force. As to revocation of closing orders, see s. 8, *post*, p. 5132.

(e) See, *e.g.*, note (x) to s. 4, *ante*, p. 5130, and s. 10 (2), and s. 12 (1) (c), *post*, pp. 5133, 5135.

(f) These two subsections which dealt with exemptions from and penalties for contravention of a closing order were repealed by s. 10 (4) and Sched. IV. of the Act of 1928, Vol. V. and 8 Halsbury's Statutes 651, 653. As to exemptions see now s. 1 (3), *ibid.*, Vol. V. and 8 Halsbury's Statutes 647, and as to penalties for contravention of a closing order see s. 8, *ibid.*, Vol. V. and 8 Halsbury's Statutes 650.

6.—(1) Whenever a local authority (b) are satisfied that a *prima facie* case is made out for making a closing order (c), the authority shall give public notice in the prescribed manner and in the prescribed form (d) of their intention to make an order, specifying therein a period (not being less than the prescribed period (e)) within which objections may be made to the making of the proposed order, and, if after taking into consideration any objections they may have received the local authority are satisfied (f) that it is expedient to make the order and that the occupiers of at least two-thirds in number of the shops to be affected by the order approve the order, they may make the order.

Procedure
for making
orders (a).

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner (g), and the order shall be submitted to the Secretary of State (h), and the Secretary of State shall consider any objections to the order, and may either disallow the order or confirm the order with or without amendment.

(3) As soon as the Secretary of State has confirmed any order (i), the order shall become final and have the effect of an Act of Parliament (k):

Provided that every closing order shall be laid before each House of Parliament as soon as may be after it is confirmed, and, if an address is presented to His Majesty by either House within the next subsequent forty days on which that House has sat after any such order is laid before it praying that the order may be cancelled, His Majesty in Council may annul the order, and any order so annulled shall thenceforth become void and of no effect, but without prejudice to any proceedings which may in the meantime have been taken under the order and without prejudice to the power of making any new closing order.

(a) As to revoking orders, see s. 8, *post*, p. 5132.

(b) See s. 13, *post*, p. 5135.

(c) As soon as they are so satisfied they must cause the necessary register to be prepared: see Regulations 6, 19, *ante*, pp. 3724, 3725.

**Note to
Section 6.**

(d) As to the prescribed manner and form, see Regulation 7, and Form A, *ante*, pp. 3724, 3728.

(e) The prescribed period is four weeks (Regulation 8, *ante*, p. 3724).

(f) Regulation 9, *ante*, p. 3724, prescribes how they are to satisfy themselves as to the wishes of the occupiers concerned; as to the method of taking a vote of occupiers, see Regulation 20, *ante*, p. 3726.

(g) As to the giving of this notice, see Regulation 10, *ante*, p. 3724.

(h) As to the documents, etc., to be submitted with the order, see Regulation 11, *ante*, p. 3725.

(i) As to publication of such an order, see Regulation 22, *ante*, p. 3726.

(k) As to the meaning of this expression, see *Patent Agents Institute v. Lockwood*, [1894] A. C. 347; 42 Digest 751, 1755, and comments thereon in *R. v. Pharmaceutical Society*, [1899] 2 I. R. 132; *Waterford Corporation v. Murphy*, [1920] 2 I. R. 165. See also *per* YOUNGER, L.J., in *R. v. Electricity Commissioners*, [1924] 1 K. B. at p. 212. Notwithstanding this provision a closing order fixing hours of closing later than the general closing hours fixed by the 1928 Act will be of no effect; see s. 4 of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 648.

As to the suspension of a closing order, see s. 7 of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 650.

Local inquiries for the purpose of promoting and facilitating early closing (a).

7.—(1) Where it appears to the Secretary of State, on the representation of the local authority (b) or a joint representation from a substantial number of occupiers of shops and shop assistants in the area of the local authority, that it is expedient to ascertain the extent to which there is a demand for early closing in any locality, and to promote and facilitate the making of a closing order therein, the Secretary of State may appoint a competent person to hold a local inquiry.

(2) If, after holding such an inquiry and conferring with the local authority, it appears to the person holding the inquiry that it is expedient that a closing order should be made, he shall prepare a draft order and submit it to the Secretary of State together with his report thereon.

(3) If the Secretary of State, after considering the draft order and report, and any representations which the local authority may have made in respect thereof, is of opinion that it is desirable that a closing order should be made, he may communicate his decision to the local authority, and thereupon there shall be deemed to be a *prima facie* case for making a closing order in accordance with the terms of the draft order, subject to such modifications (if any) as the Secretary of State may think fit.

(4) The person who held the inquiry shall, if so directed by the Secretary of State on the application of the local authority, assist and co-operate with the local authority in taking the steps preliminary to making order.

(a) Regulations 12—18, *ante*, p. 3725, provide for the holding of such local inquiries. See further as to their object a Home Office Circular of April 4th, 1912. As to the expenses, see s. 15, *post*, p. 5137.

(b) See s. 13, *post*, p. 5135.

Revocation of closing orders (a).

8. The Secretary of State may, at any time on the application of the local authority, revoke a closing order either absolutely or so far as it affects any particular class of shops, and, if at any time it is made to appear to the satisfaction of the local authority that the occupiers of a majority of any class of shops to which a closing order applies are opposed to the continuance of the order, the local authority shall apply to the Secretary of State to revoke the order in so far as it affects that class of shops, but any such revocation shall be without prejudice to the making of any new closing order.

(a) Orders made under s. 4 (6), *ante*, p. 5128, are on the same footing as closing orders. Other orders may be revoked by the local authority; see s. 18, *post*, p. 5137. Before asking the Home Secretary to revoke an order the authority must ascertain the wishes of the shopkeepers concerned; see Regulation 23, *ante*, p. 3726.

As to publication of notice of revocation, see Regulation 24, *ante*, p. 3726.

Provisions with respect to Special Classes of Trade or Business.

Section 9.

9. It shall not be lawful in any locality to carry on in any place not being a shop (a) retail trade or business of any class at any time when it would be unlawful in that locality to keep a shop open for the purposes of retail trade or business of that class, and, if any person carries on any trade or business in contravention of this section, this Act shall apply as if he were the occupier of a shop and the shop were being kept open in contravention of this Act:

Provisions as to trading elsewhere than in shops.

Provided that—

- (a) the prohibition imposed by this section shall, as respects any day other than the weekly half-holiday, be subject [in so far as the prohibition is affected by any closing order, to such exemptions and conditions, if any, as may be contained in the order)] (b); and
- (b) nothing in this section shall be construed as preventing a barber or hairdresser from attending a customer in the customer's residence, or the holding of an auction sale of private effects in a private dwelling-house; and
- (c) nothing in this section shall apply to the sale of newspapers.

(a) *E.g.*, in the streets, or in a house temporarily used for the purpose (*Cowden v. McEvoy*, [1914] 3 K. B. 108; 78 J. P. 336; 24 Digest 932, 220). For definitions of "shop," "retail trade or business," see s. 19, *post*, p. 5137. As to the sale of milk by means of an automatic machine affixed to the door of a closed shop, see *Willesden U. D. C. v. Morgan*, *ante*, p. 5128. *Semble*, this section cannot apply to the weekly half-holiday where each shopkeeper fixes his own half-holiday at will. But, when an order fixes (say) Thursday for the half-holiday, trading in the streets, or in places not being shops, on that afternoon is forbidden, although an individual shopkeeper might elect to substitute Saturday for his own shop (*Cowden v. McEvoy*, *supra*). As to weekly half-holidays, see s. 4, and as to closing orders, see s. 5, *ante*, p. 5130.

(b) Words in brackets were substituted for the words "to such exemptions and conditions (if any) as may be contained in closing orders" by s. 9 and Sched. III. of the Act of 1928, Vol. V. and 8 Halsbury's Statutes 651, 652.

10.—(1) Where several trades or businesses are carried on in the same shop, and any of those trades or businesses is of such a nature that, if it were the only trade or business carried on in the shop, the shop would be exempt from the obligation to be closed on the weekly half-holiday, the exemption shall apply to the shop so far as the carrying on of that trade or business is concerned, subject, however, to such conditions as may be prescribed (a).

Provisions as respects shops where more than one business is carried on.

["(1A) Where several trades and businesses are carried on in the same shop and any of those trades or businesses consist only of transactions of such a nature that if they were the only transactions carried on in the shop the provisions of this Act relating to general closing hours would not apply to the shop, the shop may be kept open after the general closing hour for the purposes of those transactions alone, subject, however, to such conditions as may be prescribed";] (b)

(2) Where several trades and businesses are carried on in the same shop and any of those trades or businesses are of such a nature that if they were the only trades or businesses carried on in the shop a closing order would not apply to the shop, the shop may be kept open after the closing hour for the purposes of those trades and businesses alone, but on such terms and under such conditions as may be specified in the order (c).

(3) Where several trades or businesses are carried on in the same shop, the local authority may require the occupier of the shop to specify which trade or business he considers to be his principal trade or business, and no trade or business other than that so specified shall, for the purpose of determining a majority [or any proportion or number of occupiers or of shops for the purposes of] (d) this Act, be considered as carried on in the shop

Section 10. unless the occupier of the shop satisfies the local authority that it forms a substantial part of the business carried on in the shop (e).

(a) This sub-section relates to s. 4, *ante*, p. 5127. For the prescribed conditions, see Regulation 5, *ante*, p. 3724; certain notices must be affixed, and, as far as reasonably practicable, no goods connected with a business not exempted may be exhibited.

(b) This sub-section was added by s. 9 and Sched. III. of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 651, 652. As to transactions which are excluded from the operation of the general closing hours, see Sched. I. of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 651.

(c) This sub-section relates to s. 5, *ante*, p. 5130.

(d) These words were substituted for "under" by s. 9 and Sched. III. of the 1928 Act. The added words were included to meet the cases provided for by s. 3 of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 648.

(e) The effect of this provision is that a shopkeeper selling a little drapery as a mere adjunct to a distinct business, but being in no real sense a draper, will not be entitled to vote on questions affecting drapers. In connection with this sub-section, see Regulations 4 (1), 6 and 19, *ante*, pp. 3723, 3724, 3725, as to preparation of a register of occupiers of shops.

Special provisions as to holiday resorts.

11(a).—(1) In places frequented as holiday resorts (b) during certain seasons of the year, the local authority may by order (c) suspend, for such period or periods as may be specified in the order, not exceeding in the aggregate four months in the year, any obligation imposed by this Act to close shops on the weekly half-holiday (d).

[(1A) Any order made under this section may be made so as to apply to the whole or to any part of the area of the local authority, and to all shops, or to shops of any class, within that area or part.] (e)

(2) Where the occupier of any shop in any place in which any such order of suspension is in force satisfies the local authority that it is the practice (f) to allow all his shop assistants a holiday on full pay of not less than two weeks in every year, and keeps affixed in his shop a notice to that effect, the requirement (g) that on one day in each week a shop assistant shall not be employed after half-past one o'clock shall not apply to the shop during such period or periods as aforesaid.

(a) As to the alteration of general closing hours under the 1928 Act in case of holiday resorts and sea fishing centres, see s. 6 of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 649.

(b) "Holiday resort" is not defined: presumably it means a resort frequented by holiday makers at particular seasons of the year as opposed to one where the influx of visitors is not appreciably greater at one time than at another. If an authority wrongly treat their town as a holiday resort, the validity of their order could apparently be impugned in the courts.

(c) As to revocation of such an order, see s. 18 (2), *post*, p. 5137. The order, if made at all, must apparently apply to all classes of shops. For this reason it should be kept distinct from orders under s. 4, *ante*, p. 5127, fixing the day and hour for half-holiday closing.

(d) *I.e.*, under s. 4, *ante*, p. 5127.

(e) This sub-section was added by s. 9 and Sched. III. of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 651, 652, in order to make the power of suspension under the section in the text consistent with the power of altering the general closing hours given by s. 6 of that Act, Vol. V. and 8 Halsbury's Statutes 649.

(f) The authority must be satisfied as to the shopkeeper's practice on the point. See as to this the Home Office Circular of April 4th, 1912. *Semble*, the holiday must be one of two consecutive weeks.

(g) *I.e.*, in s. 1, *ante*, p. 5125.

Application to Post Office business.

12.—(1) Where Post Office business is carried on in any shop in addition to any other business, this Act shall apply to that shop subject to the following modifications:—

(a) If the shop is a telegraph office, the obligation to close on the weekly half-holiday shall not apply to the shop so far as relates to the transaction of Post Office business thereat:

- (b) Where the Postmaster-General certifies that the exigencies of the postal service require that Post Office business should be transacted in any such shop at times when under the provisions of this Act relating to the weekly half-holiday the shop would be required to be closed, or under conditions not authorised by section one of this Act, the shop shall, for the purpose of the transaction of Post Office business, be exempted from the provisions of this Act to such extent as the Postmaster-General may certify to be necessary for the purpose :

Note to
Section 12.

Provided that in such cases the Postmaster-General shall make the best arrangements that the exigencies of the postal service allow with a view to the conditions of employment of the persons employed being on the whole not less favourable than those secured by this Act :

- (c) *The provisions contained in any closing order imposing terms or conditions on the keeping open of any such shop after the closing hour for the transaction of Post Office business shall be subject to the approval of the Postmaster-General (a).*

(2) Save as aforesaid, nothing in this Act shall apply to Post Office business, or to any premises in which Post Office business is transacted.

(a) This sub-section was repealed by s. 10 (4) and Sched. IV. of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 651; 653.

Enforcement of Act.

13.—(1) It shall be the duty of every local authority (a) to enforce within their district the provisions of this Act, and of the orders made thereunder or under any enactment repealed by this Act (b), and for that purpose to institute and carry on such proceedings in respect of failures to comply with or contraventions of this Act and such orders as aforesaid as may be necessary to secure the observance thereof, and to appoint inspectors (c); and an inspector so appointed shall, for the purposes of his powers and duties, have in relation to shops all the powers conferred in relation to factories and workshops on inspectors by section one hundred and nineteen of the Factory and Workshop Act, 1901 (d), and that section and section one hundred and twenty-one (e) of the same Act shall apply accordingly; and an inspector may, if so authorised by the local authority, institute and carry on any proceedings under this Act on behalf of the authority (f).

Powers and
duties of local
authorities.

1 Edw. 7, c. 22.

- (2) In this Act the expression "local authority" means—
as respects the city of London, the common council;
as respects any municipal borough, the council of the borough;
as respects any urban district with a population according to the returns of the last published census for the time being of twenty thousand or upward, the district council;
elsewhere, the county council:

Provided that a county council may, with the approval of the Secretary of State, make arrangements with the council of an urban district in the county with a population of less than twenty thousand, or with the council of a rural district, for the exercise by the council of that district as agents for the county council, on such terms and subject to such conditions as may be agreed on, of any powers of the county council under this Act within the district, and the council of the district may, as part of the agreement, undertake to pay the whole or any part of the expenses incurred in connection with the exercise of the powers delegated to them, and the London County Council may, with the like approval, make similar arrangements with the council of any metropolitan borough.

Section 13. (3) The expenses of a local authority under this Act (including any expenses which a council undertake to pay as aforesaid) shall be defrayed—
in the case of the common council of the city of London, out of the general rate ;

* * * * * * (g)

in the case of a county council, as expenses for special county purposes ;
in the case of a metropolitan borough council, as part of the expenses of the council.

(a) For definition of "local authority," see sub-s. (2).

(b) As to closing orders made under the repealed Shop Hours Act, 1904, continuing in force until expressly revoked, see proviso to s. 22, *post*, p. 5138. See also note (a) on s. 14, *post*.

(c) The Home Secretary deprecated the appointment of police officers as whole time or part time inspectors under this Act, see Home Office Circular of June 28th, 1912. See the same Circular for suggestions as to how the police may nevertheless render assistance in enforcing the Act.

(d) This section (8 Halsbury's Statutes 581) gives to an inspector wide powers of entering and inspecting shops and of questioning persons found therein.

(e) This section (*op. cit.* 582) requires an inspector on applying for admission to produce a certificate of his appointment if it be asked for. A form of certificate is prescribed, see Regulation 25 and Form V., *ante*, pp. 3726, 3728.

(f) Presumably a general authority will suffice. It should be by resolution: *cf. Duchesne v. Finch* (1912), 76 J. P. 377; 13 Digest 411, 1308; *Watt v. Hegarty* (1913), 47 Ir. L. T. 86.

(g) Certain words here were repealed by the L. G. A., 1933, *ante*, p. 735.

Provisions
with respect
to offences.

14.—(1) All offences against this Act shall be prosecuted, and all fines under this Act shall be recovered in like manner as offences and fines are prosecuted and recovered under the Factory and Workshop Act, 1901, and sections one hundred and forty-three to one hundred and forty-six of that Act, and so much of section one hundred and forty-seven thereof as relates to evidence respecting the age of any person, so far as those provisions are applicable, shall have effect as if re-enacted in this Act and in terms made applicable thereto (a) :

Provided that all fines imposed in any proceedings instituted by or on behalf of a local authority in pursuance of their powers and duties under this Act shall be paid to the local authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed.

(2) Where an offence for which the occupier of a shop is liable under this Act, has, in fact, been committed by some manager, agent, servant, or other person, the manager, agent, servant, or other person shall be liable to the like penalty as if he were the occupier.

(3) Where the occupier of a shop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, he proves to the satisfaction of the court that he has used due diligence to enforce the execution of the Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

(a) See these sections (8 Halsbury's Statutes 591, 592). Sections 13 and 14 of the present Act are applied also by s. 4 (2) of the Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930 (23 Halsbury's Statutes 124); s. 13 (1) of the Shops Act, 1934 (27 Halsbury's Statutes 237); s. 6 of the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936 (29 Halsbury's Statutes 152); s. 14 of the Shops (Sunday Trading Restrictions) Act, 1936 (*ibid.* 163).

General Provisions.

Section 15.

15. Any expenses incurred by the Secretary of State under this Act, including the remuneration of any person holding a local inquiry under section seven of this Act, shall, to such extent as may be sanctioned by the Treasury, be paid out of moneys provided by Parliament. Expenses of Secretary of State.

16. In addition to the local inquiries which the Secretary of State is empowered to hold under section seven of this Act, the Secretary of State may cause a local inquiry to be held for the purposes of any of his powers and duties under this Act, and the costs incurred in relation to any such last-mentioned inquiry, including the salary of any officer engaged in the inquiry, not exceeding three guineas a day, shall be paid by the local authority concerned, and the Secretary of State may certify the amount of the costs incurred. Any sums so certified shall be a debt to the Crown from the local authority (a). Local inquiries.

(a) They would therefore be recoverable by an extent of the authority's property.

17. The Secretary of State may make regulations (a)—

Regulations.

- (a) for prescribing anything which under this Act is to be prescribed ; and
- (b) as to the mode of ascertaining the opinion of occupiers of shops ; and
- (c) as to conduct of local inquiries and matters incidental thereto ; and
- (d) as to the procedure for obtaining the revocation of a closing order ; and
- (e) generally for carrying into effect the provisions of this Act.

(a) Regulations (see *ante*, p. 3723) dated April 1st, 1912 (Stat. R. & O., No. 316 of 1912), have been made under this section.

By Regulation 21 (*ante*, p. 3726) no informality in complying with the Regulations is to frustrate the making of, or invalidate, any order.

18.—(1) Any order made by a local authority under this Act may be proved by the production of a copy thereof certified to be a true copy by a person purporting to be the clerk of the local authority by whom the order is made. Proof and revocation of orders.

(2) Any order made by a local authority under this Act may, unless some other method of revocation is provided by this Act, be revoked by an order made in the like manner and subject to the like approval, if any, as the original order (a)

(a) Closing orders under s. 5 and orders made under s. 4 (6), which require confirmation by the Home Secretary, can only be revoked by him, see s. 8, *ante*, p. 5132. The authority may themselves revoke the orders : cf. Interpretation Act, 1889, s. 32 (3) (18 Halsbury's Statutes 1003). Before doing so, they must ascertain the wishes of the shopkeepers concerned : see Regulation 23, *ante*, p. 3726.

As to publication of notice of revocation, see Regulation 24, *ante*, p. 3726.

19.—(1) In this Act (a)—

The expression "shop" (b) includes any premises where any retail trade or business is carried on (c) ;

Interpretation and saving.

The expression "retail trade or business" includes the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, [the business of lending books or periodicals when carried on for purposes of gain (d)] and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement ;

Section 19.

The expression "shop assistant" means any person wholly or mainly employed in a shop in connexion with the serving of customers or the receipt of orders or the despatch of goods (a);

The expression "bank holiday" includes any public holiday or day of public rejoicing or mourning;

The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

(2) Nothing in this Act shall apply to any fair lawfully held or any bazaar or sale of work for charitable or other purposes from which no private profit is derived.

(a) As to these definitions, see the Home Office Memorandum of March, 1912.

(b) In the Shop Hours Act, 1892, unless the context otherwise required, "shop" meant "retail and wholesale shops, markets, stalls, and warehouses in which assistants are employed for hire," and included "licensed public houses and refreshment houses of any kind." A building used solely as a high-class hotel and restaurant, having no bar or counter for the sale of liquor, and not being in the ordinary sense of the term a "public house," although fully licensed under the Alehouse Act, 1828, was held to be a "public house," and therefore a "shop" within this definition (*Suway Hotel Co. v. London C. C.*, [1900] 1 Q. B. 665; 64 J. P. 262; 24 Digest 928, 192). See, however, as to refreshment houses the Act of 1913, *post*, p. 5140. A boy employed at the railway bookstall at R. went every morning to the village two miles off to deliver newspapers; he then sold newspapers for a short time at the station before returning to R.; for the purposes of such sale, he erected each day a stall consisting of a board upon trestles. It was held that the stall was probably a "shop" for some purposes of the Act, but not for the purposes of s. 4 of the 1892 Act (see s. 2 (3) of this Act (8 Halsbury's Statutes 615)), as to exhibiting a notice, because the boy was really employed at R., where a notice was duly exhibited (*Smith & Son v. Kyle*, [1902] 1 K. B. 286; 66 J. P. 101; 24 Digest 928, 195). See also *Ward v. Smith & Son*, *ante*, p. 5126. Where milk was procured from an automatic machine attached to the door of a closed shop it was held that the place where the sale occurred was a shop within the meaning of the Act (*Willesden U. D. C. v. Morgan*, *ante*, p. 5128). A hotel is not a shop, nor are the waiters employed therein shop assistants within the meaning of this definition (*Gordon Hotels, Ltd. v. London C. C.*, [1916] 2 K. B. 27; 80 J. P. 266; 24 Digest 928, 193). But the dining-room of a non-residential hotel which is open to non-residents is a shop and waiters therein are shop assistants (*George Hotel (Colchester) v. Ball*, [1938] 3 All E. R. 790; 102 J. P. 337; Digest Supp.). Also a coal merchant's branch office in which no coal is kept and only orders are dealt with is a shop, and the attendant in it who takes the orders is a shop assistant (*Wallace v. Dixon*, [1917] 2 L. R. 236; 24 Digest 928, p).

A booth or stall erected on a beach and used only for mechanical games of chance or skill, in which members of the public are invited to participate on payment of an entrance fee is not a shop within the above definition (*Dennis v. Hutchinson*, [1922] 1 K. B. 693; 86 J. P. 85; 24 Digest 930, 209). As to a kitchenmaid in a restaurant being a "shop assistant," see *Melluish v. London C. C.*, [1914] 3 K. B. 325; 78 J. P. 441; 24 Digest 928, 194. As to the employment of a potman on licensed premises whose duties were regarded by the court as sufficiently proximate to the serving of customers, see *Prance v. London C. C.*, [1915] 1 K. B. 688; 79 J. P. 242; 24 Digest 929, 205.

For the purposes of s. 2 (8 Halsbury's Statutes 614), wholesale shops and warehouses are to be treated as shops (see s. 2 (5) *op. cit.* 615).

(c) An order under the Act fixed the closing hours for shops "in which the retail trade or business of a jeweller, gold or silversmith, ironmonger, hardware merchant, or tool dealer is carried on." The respondent, who was an auctioneer, and who sold on his premises, being a shop, all kinds of articles, including articles of jewellery entrusted to him for sale by auction and pawnbrokers' pledges, sold by auction in the ordinary way, on certain days after the closing hours fixed by the order, articles of jewellery. It was held that the respondent had not thereby carried on the retail business of a jeweller within the meaning of the order (*Lucas v. Reubens*, [1921] 2 K. B. 482; 85 J. P. 166; 24 Digest 930, 208).

(d) Words in square brackets added by the Shops Act, 1936 (29 Halsbury's Statutes 149), with further words excluding philanthropic or charitable objects and clubs or institutions not carried on for purposes of gain.

20. [Scotland.]

21. [Ireland.]

22.—(1) This Act may be cited as the Shops Act, 1912.

(2) This Act shall come into operation on the first day of May nineteen hundred and twelve.

(3) *The Shops Regulation Acts, 1892 to 1911 (a), are hereby repealed : (b)* Section 22.

Provided that any closing order made under the Shop Hours Act, 1904 (c), ^{4 Edw. 7, c. 31.} which is in force at the commencement of this Act, shall continue in force until revoked in accordance with the provisions of this Act, except in so far as it fixes a closing hour earlier than seven o'clock for any shop to which the provisions of this Act with respect to the weekly half-holiday apply.

(a) The Shops Regulation Acts, 1892 to 1911, were : (i.) the Shop Hours Act, 1892, as to hours of employment of young persons, substantially re-enacted in s. 2 (8 Halsbury's Statutes 614) ; (ii.) the Shop Hours Act, 1893, as to salaries of inspectors ; (iii.) the Shop Hours Act, 1895, passed merely to remedy a draftsman's omission disclosed by *Hammond v. Puleford*, [1895] 1 Q. B. 223 ; 59 J. P. 533 ; 24 Digest 930, 207 ; (iv.) the Seats for Shop Assistants Act, 1899, substantially re-enacted in s. 3, *ante*, p. 5127 ; (v.) the Shop Hours Act, 1904, as to closing orders, substantially re-enacted in ss. 5 *et seq.*, *ante*, pp. 5130 *et seq.* ; and (vi.) the Shop Hours Act, 1911, as to hours of employment and meal times and weekly half-holidays, see now ss. 1, 4, *ante*, pp. 5125, 5127. This last Act never came into operation.

(b) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(c) Such orders could combine weekly half-holiday and ordinary closing provisions.

SCHEDULES.

FIRST SCHEDULE (a).

Section 1.

INTERVALS FOR MEALS.

Intervals for meals shall be arranged so as to secure that no person shall be employed for more than six hours without an interval of at least twenty minutes being allowed during the course thereof.

Without prejudice to the foregoing provision—

(1) where the hours of employment include the hours from 11.30 a.m. to 2.30 p.m., an interval of not less than three-quarters of an hour shall be allowed between those hours for dinner ; and

(2) where the hours of employment include the hours from 4 p.m. to 7 p.m., an interval of not less than half-an-hour shall be allowed between those hours for tea ;

and the interval for dinner shall be increased to one hour in cases where that meal is not taken in the shop, or in a building of which the shop forms part or to which the shop is attached :

Provided that an assistant employed in the sale of refreshments or in the sale by retail of intoxicating liquors need not be allowed the interval for dinner between 11.30 a.m. and 2.30 p.m., if he is allowed the same interval so arranged as either to end not earlier than 11.30 a.m. or to commence not later than 2.30 p.m., and the same exemption shall apply to assistants employed in any shop on the market day in any town in which a market is held not oftener than once a week, or on a day on which an annual fair is held.

(a) For a modification applying to " young persons," see s. 9 (4) of the Shops Act, 1934 (27 Halsbury's Statutes 234).

SECOND SCHEDULE (a).

Section 4.

TRADES AND BUSINESSES EXEMPTED FROM THE PROVISIONS AS TO WEEKLY HALF-HOLIDAY.

The sale by retail of intoxicating liquors.

The sale of refreshments, including the business carried on at a railway refreshment room.

The sale of motor, cycle, and air-craft supplies and accessories to travellers (b).

The sale of newspapers and periodicals.

The sale of meat, fish, milk, cream, bread, confectionery, fruit, vegetables, flowers, and other articles of a perishable (c) nature.

The sale of tobacco and smokers' requisites.

The business carried on at a railway bookstall on or adjoining a railway platform.

The sale of medicines and medical and surgical appliances.

Sched. II.

Retail trade carried on at an exhibition or show, if the local authority certify that such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show.

(a) See as to this schedule generally, the notes to s. 4, *ante*, p. 5127, and the cases therein cited.

(b) This provision only includes the sale of supplies and accessories for motors, cycles, and air-craft and not the sale of other supplies or accessories to travellers (*Williams v. Gosden*, [1914] 1 K. B. 35; 77 J. P. 464; 24 Digest 933, 224).

(c) The Home Secretary has been advised that "preserved" foods, etc., are not "of a perishable nature." Butter has been held to be "perishable" (*London C. C. v. Welford's Surrey Dairies Co., Ltd.*, [1913] 2 K. B. 529; 77 J. P. 206; 24 Digest 933, 223). *Semble*, "run honey" is not confectionery (*ibid.*). As to the sale of sweets and chocolates, see *Gee v. Davies*, *ante*, p. 5130.

Section 5.

THIRD SCHEDULE.

TRADES AND BUSINESSES EXEMPTED FROM PROVISIONS OF CLOSING ORDERS (a).

(a) This schedule was repealed by s. 10 (4) and Sched. IV. of the 1928 Act, Vol. V. and 8 Halsbury's Statutes 651, 653. As to transactions exempted from the provisions of closing orders see now Sched. I. of that Act, Vol. V. and 8 Halsbury's Statutes 651.

FOURTH SCHEDULE.

[Ireland.]

FIFTH SCHEDULE.

[Ireland.]

THE SHOPS ACT, 1913.

(2 & 3 GEO. 5, c. 24.)

An Act to amend the Shops Act, 1912, in its application to premises for the sale of refreshments. [7th March, 1913.]

Amendment
of 2 Geo. 5, c. 3,
in its applica-
tion to premises
for the sale of
refreshments.

1.—(1) The provisions of section one (a) of the Shops Act, 1912, shall not apply to shop assistants employed in any premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, if their employment is wholly or mainly in connexion with the sale of intoxicating liquors or refreshments for consumption on the premises, and if the occupier of the premises, by such notice as is hereinafter mentioned, signifies that he elects that instead of those provisions the following provisions shall apply:—

(a) No such assistant shall be employed for more than sixty-five hours in any week exclusive of meal times (b).

(b) Provision shall be made for securing to every such assistant—

(i) thirty-two whole holidays on a week day in every year, of which at least two shall be given within the currency of each month and which shall comprise a holiday on full pay of not less than six consecutive days;

(ii) twenty-six whole holidays on Sunday in every year, so distributed that at least one out of every three consecutive Sundays shall be a whole holiday:

Provided that two half holidays on a week day shall be deemed equivalent to one whole holiday on a week day.

- (c) Intervals for meals shall be allowed to every such assistant amounting on a half holiday to not less than three-quarters of an hour, and on every other day to not less than two hours, and no assistant shall be employed for more than six hours without being allowed an interval of at least half an hour : Section 1.

Provided that this provision shall not apply if the only persons employed as such shop assistants are members of the family of the occupier of the premises maintained by him and dwelling in his house.

- (d) The occupier shall affix and constantly maintain in a conspicuous position in the premises a notice in the prescribed form referring to the provisions of this section, and stating the steps taken with a view to compliance therewith.

(2) Where the occupier of any premises has signified as aforesaid that he elects that the foregoing provisions shall apply, and any of those provisions are not complied with, the occupier of the premises shall be guilty of an offence against the Shops Act, 1912, and shall be liable to a fine not exceeding :—

- (a) in the case of a first offence, one pound ;
- (b) in the case of a second offence, five pounds ; and
- (c) in the case of a third or subsequent offence, ten pounds.

(3) For the purposes of this section, the expression “ half holiday ” means a day on which the employment of an assistant ceases not later than three o'clock in the afternoon and on which he is not employed for more than six hours including meal time.

(4) A notice under this section may be withdrawn by the occupier of the shop at the expiration of a year from the date when it was given, and thereafter at the expiration of any succeeding year, and upon any such withdrawal section one of the Shops Act, 1912, shall apply to the shop in like manner as before the notice was given.

(5) The Shops Act, 1912, as amended by this Act, shall, in its application to any premises in respect to which a notice under this section is in force, have effect as though the definition of “ shop assistant ” included all persons wholly or mainly employed in any capacity at the premises in connexion with the business there carried on (c).

(a) See this section, *ante*, p. 5125.

(b) But see sub-s. (5) of s. 5 of the Shops Act, 1934 (27 Halsbury's Statutes 230) as regards “ young persons ” to whom that Act applies.

(c) Where the occupier of premises elects to apply this Act to such premises he must be taken to elect to adopt the definition of “ shop assistant ” contained in this sub-section and cannot be heard to say that any one who falls within that definition is not a shop assistant (*Rutherford v. Trust Houses, Ltd.*, [1926] 1 K. B. 321 ; 90 J. P. 62 ; Digest Supp.).

2.—(1) This Act may be cited as the Shops Act, 1913, and shall be construed as one with the Shops Act, 1912 ; and the Shops Act, 1912, and this Act may be cited together as the Shops Acts, 1912 and 1913. Short title and extent.

(2) This Act shall not extend to shops in Ireland in which the business of the sale by retail of intoxicating liquors is carried on.

THE FABRICS (MISDESCRIPTION) ACT, 1913.

(3 & 4 GEO. 5, c. 17.)

An Act to prevent the Misdescription of Fabrics.

[15th August, 1913.]

1. It shall not be lawful for any person to sell, or expose, or have in his possession for sale, any textile fabric either in the piece, or made up into garments, or in any other form, to which is attributed expressly or inferentially the Prohibition of sale with misleading description as to inflam-

Section 1. quality of non-inflammability, or safety from fire, or any degree of such quality of non-inflammability or safety from fire—

(1) by wording or marking, descriptive or otherwise—

(a) upon the material; or

(b) upon any wrapper or band; or

(c) contained in any letterpress or writing referring to the material; or

(2) by verbal representation at the time of sale;

unless such textile fabric conforms to such standard of non-inflammability as may be prescribed by regulations (a) to be made by the Secretary of State, and, if any person sells, or has in his possession, textile fabric in contravention of this Act, he shall be liable on summary conviction to a fine not exceeding, in the case of a first offence, ten pounds, or, in the case of a second or subsequent offence, fifty pounds.

(a) On January 20th, 1914, the Home Secretary made the following regulations under this section:—1. A textile fabric shall be deemed to conform to the standard of non-inflammability if, when tested in accordance with the prescribed method of testing, it is not set alight, or, if set alight, burns without a flame or with a flame which does not spread but converges and dies out. 2. The prescribed method of testing shall be as follows:—A sample of the fabric measuring not less than one square yard shall be taken, and, after it has been four times in succession thoroughly washed with soap and water, dried and ironed, shall be suspended vertically without folds or creases and so that the lower edge shall not be a selvage or a folded edge. The flame of a wax taper not less than $\frac{1}{4}$ inch or more than $\frac{3}{8}$ inch in thickness shall then be brought in contact with the fabric at its lower edge and shall be kept in contact for not less than twelve or more than fifteen seconds.

Power of
Secretary of
State to make
regulations.
56 & 57 Vict.
c. 56.

2. All regulations made by the Secretary of State under this Act shall be laid before Parliament as soon as may be after they are made, and the Rules Publication Act, 1893, shall apply to such regulations as if they were statutory rules within the meaning of section one of that Act.

Cases where
vendors purchase
under
warranty.

3. Where in any proceedings against a person charged with an offence under this Act, it is proved that an offence under this Act has been committed, but that the person charged with the offence—

(a) purchased the textile fabric in respect of which the offence was committed from a person resident within (a) the United Kingdom who sold the textile fabric under a warranty that it complied with the prescribed standard of non-inflammability; and

(b) took reasonable steps to ascertain, and did in fact believe in the accuracy of the statement contained in the warranty;

the person so charged shall be entitled upon an information duly laid by him to have the person who gave the warranty brought before the court, and that person may be summarily convicted of the offence, and the person originally charged shall be exempt from any fine, and the person so convicted shall, in the discretion of the court, also be liable to pay any costs incidental to the proceedings.

(a) If the fabric is purchased from a person outside the United Kingdom, the purchaser must take all responsibility for it.

Material found
in possession
deemed to be
for sale.

4. Where a person is charged with having textile fabric in his possession in contravention of this Act, any such material proved in the proceedings to have been found in his possession shall be deemed to be intended for sale as aforesaid unless the contrary is proved.

Powers and
duties of local
authorities.

5.—(1) It shall be the duty of every local authority to enforce the provisions of this Act within their district, and for that purpose any male or female person or officer whom the local authority may appoint shall have power, if so authorised by the local authority, to institute and carry on

any proceedings which the local authority is authorised to institute and carry on under this Act. Section 5.

- (2) In this Act the expression "local authority" means—
 as respects the city of London the common council;
 as respects any municipal borough, the council of the borough;
 as respects any urban district, the district council;
 elsewhere, the county council:

Provided that the London County Council may, with the approval of the Secretary of State, make arrangements with the council of any metropolitan borough for the exercise by the metropolitan borough as agents for the London County Council, on such terms and subject to such conditions as may be agreed on, of any powers of the London County Council under this Act within the district of the metropolitan borough, and the council of the metropolitan borough may, as part of the agreement, undertake to pay the whole or any part of the expense incurred in connection with the exercise of the powers delegated to them.

- (3) The expenses of a local authority under this Act shall be defrayed,—
 in the case of the common council of the city of London, out of the general rate;

* * * * *

in the case of a county council, as expenses for special county purposes;
 in the case of a metropolitan borough council, as part of the expenses of the council.

(a) Certain words repealed by the L. G. A., 1933, *ante*, p. 735.

6. All fines imposed in any proceedings instituted by a local authority in pursuance of their powers and duties under this Act shall be paid to the local authority and carried to the credit of the fund out of which the expenses incurred by the authority under this Act are defrayed. Fines imposed to be paid to local authorities.

7. 8. [Scotland; Ireland.]

9. This Act may be cited as the Fabrics (Misdescription) Act, 1913, and shall come into operation on the first day of January nineteen hundred and fourteen. Short title and commencement of Act.

THE ANCIENT MONUMENTS CONSOLIDATION AND AMENDMENT ACT, 1913.

(3 & 4 GEO. 5, c. 32.)

* * * * *

Miscellaneous.

18. Where it appears to the council of a borough or a district, which expression in this Act shall include the Common Council of the City of London, that the erection of buildings of a style of architecture in harmony with other buildings of artistic merit existing in the locality is impeded in consequence of any byelaws (a) with respect to new streets or buildings in force in the borough or district, the council may, with the consent of the Local Government Board (b), relax the byelaws so far as may be necessary to allow the erection of such buildings (c), provided that the council is satisfied that such buildings can be erected with due regard to safety from fire and to sanitation: Provided also that no byelaws in force in the city of London shall be relaxed under this Relaxation of byelaws.

Section 18. section except such as are administered by the Common Council of the city of London.

(a) As to such byelaws, see the P. H. A., 1875, s. 157, *ante*, p. 4432, and P. H. A., 1936, ss. 61 *et seq.*, *ante*, pp. 190 *et seq.*

(b) Now the M. of H. (see M. of H. Act, 1919, *post*, p. 5191).

(c) It is believed that no case has ever arisen for using this power.

* * * * *

THE BANKRUPTCY ACT, 1914.

(4 & 5 GEO. 5, c. 59.)

An Act to consolidate the Law relating to Bankruptcy (a).

[10th August, 1914.]

* * * * *

Priority of
debts.

33.—(1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts (b)—

(a) All parochial or other local rates (c) due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax, assessed on the bankrupt up to the fifth day of April next before the date of the receiving order, and not exceeding in the whole of one year's assessment (d);

(b) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds (e);

(c) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt during two months before the date of the receiving order: Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order;

(d) All amounts, *not exceeding in any individual case one hundred pounds (f)*, due in respect of compensation under the Workmen's Compensation Act, 1906, the liability whereof accrued before the date of the receiving order, subject nevertheless to the provisions of section five of that Act (g); and

(e) All contributions payable under the National Insurance Act, 1911, by the bankrupt, in respect of employed contributors or workmen in an insured trade during four months before the date of the receiving order (h).

(2) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next

6 Edw. 7,
c. 58.

1 & 2 Geo. 5,
c. 55.

before the date of the receiving order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Section 33.

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made (i).

(5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order (k).

(6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(7) Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid *pari passu*.

(8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy.

(9) Nothing in this section shall alter the effect of section three of the Partnership Act, 1890, or shall prejudice the provisions of the Friendly Societies Act, 1896, or of section fourteen of the Trustee Savings Banks Act, 1863, or the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor (l). 53 & 54 Vict. c. 39.
59 & 60 Vict. c. 25.
26 & 27 Vict. c. 37.

* * * * *

(a) This Act repeals the Bankruptcy Act, 1883 (1 Halsbury's Statutes 581), and the sections which are here set out are in substance a re-enactment of those of the earlier Act relating to the preferential payments in bankruptcy.

For the corresponding provisions of the Companies Act, 1929, relating to preferential payments in the winding-up of companies, see that Act, Vol. V. and 2 Halsbury's Statutes 775.

As to when a bankruptcy commences, see *Re Bumpus, Ex parte White*, [1908] 2 K. B. 330; 5 Digest 646, 5794.

(b) These words must be read subject to s. 130 (6) of the Act (1 Halsbury's Statutes 691), which provides that in the administration of the property of a deceased debtor under an order of administration the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in the provisions of the Act relating to the priority of other debts, be payable in full out of the debtor's estate in priority to all other debts.

(c) This expression would include general rates made by an urban or rural authority. It does not include harbour dues (*Re H. & Co.* (1891), 27 L. R. Ir. 271; 4 Digest 474, 4280 i). It was held *Re Mannesman Tube Co.*, [1901] 2 Ch. 93; 65 J. P. 377; 10 Digest 798, 5042 (apparently without argument), to include meter charges for water: *sed quere*. The *Mannesman Tube* case was not followed by a county court judge in *Worthing Corporation v. Orbell* (1923), 45 M. C. C. 217, who applied the definition of "local rate" contained in the Local Loans Act, 1875, s. 34, *ante*, p. 4541, and held that a water rate was not a "local rate" within the Act since it was not applicable for public local purposes. See also *Re An Arranging Debtor*, [1921] 2 Ir. R. 1.

(d) A. was assessed to a local rate as the occupier of certain premises, and his rate was payable in advance for half a year on October 8th, 1886. On January 17th, 1887, A. became bankrupt, and at that time the rate remained unpaid. On February 1st, 1887, the official receiver, as trustee, sold A.'s interest in the premises to B., who allowed A. to remain in occupation as his tenant. The rate was claimed from the trustee for the whole half-year; the trustee offered to pay the proportion of it up to February 1st, being for the period during which he continued occupier. *Held*, that the bankrupt had not ceased to be occupier, and that the trustee was liable for the rate for the whole half-

**Note to
Section 33.**

year (*Ex parte Ystradgynodwg L. B., Re Thomas* (1887), 57 L. J. Q. B. 39; 58 L. T. 113; 4 Digest 474, 4282). See also in *Re Smith, Ex parte Mason, ante*, p. 4310. Where a trustee in bankruptcy entered upon the premises of the bankrupt and subsequently disclaimed the tenancy under s. 54 of the Bankruptcy Act, 1914 (1 Halsbury's Statutes 655), the trustee was held personally liable for the rates on the premises during the period between his entry and the subsequent disclaimer (*Re Lister, Ex parte Bradford Overseers and Bradford Corporation*, [1926] 1 Ch. 149; 90 J. P. 33; Digest Supp.).

(e) See *Re Smith, Ex parte Fox* (1886), 17 Q. B. D. 4; 4 Digest 477, 4315; *Re Klein, Ex parte Goodwin*, [1906] W. N. 148; 22 T. L. R. 664; 4 Digest 475, 4287; *Cairney v. Back*, [1906] 2 K. B. 746; 4 Digest 476, 4299; *Re Newspaper Proprietary Syndicate, Ltd.*, [1900] 2 Ch. 349; 4 Digest 476, 4298; *Winter German Opera, Ltd.* (1907), 23 T. L. R. 662; 42 Digest 909, 58. The wages or salary referred to in this paragraph apply to the said wages or salary whether or not earned wholly or in part by way of commission (Bankruptcy (Amendment) Act, 1926, s. 2 (1 Halsbury's Statutes 716)).

The reference to local rates in this paragraph includes sums due on account of the spindles levy under the Cotton Spinning Industry Act, 1936, s. 19 (29 Halsbury's Statutes 999).

(f) Words in italics repealed by the Workmen's Compensation Act, 1923, s. 31 and Sched. II. (11 Halsbury's Statutes 513).

(g) This exception is taken from the Workmen's Compensation Act, 1906, s. 5 (3). The costs of obtaining an award under that Act are not, however, a priority payment. See *Re Jinks*, [1914] W. N. 337; 112 L. T. 88; 34 Digest 489, 4037.

(h) This exception was taken from the National Insurance Act, 1911, s. 110, see now s. 106 of the National Health Insurance Act, 1924.

(i) This sub-section was an addition to the previous law. The landlord who has distrained within the three months herein mentioned, must, out of the proceeds of his distress, pay the rates and other preferential debts mentioned in the section, but he, in turn, will have the right to be repaid before other creditors.

(k) The priority as to rates, etc., applies in the case of a deceased insolvent whose estate is being administered in the Chancery Division (*Re Heywood, Parkington v. Heywood*, [1897] 2 Ch. 593; 4 Digest 474, 4279).

(l) The Law of Partnership Act, 1865, was repealed by the Partnership Act, 1890 (12 Halsbury's Statutes 529); but s. 5 was, in effect, reproduced by ss. 2 (3) (d) (e) and 3 (*op. cit.* 531, 532) thereof. By s. 2 (*op. cit.* 530), in determining whether a partnership does or does not exist, regard shall be had to the following rules: (3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not of itself make him a partner in the business; and in particular (d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing, and signed by or on behalf of all the parties thereto; (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of a sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such. And by s. 3 of the same Act, in the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan; and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. But this section does not deprive the lender of his right to retain any security he may have taken for his money nor to foreclose his security (*Re Lonergan, Ex parte Sheil* (1877), 4 Ch. D. 789; 4 Digest 484, 4353; *Badeley v. Consolidated Bank* (1886), 34 Ch. D. 536; 26 Digest 121, 854).

The Friendly Societies Act, 1875, is now repealed by the Friendly Societies Act, 1896 (8 Halsbury's Statutes 933), but the provisions of s. 15 (7) are reproduced by s. 35 of that Act (*op. cit.* 953) as follows, viz. (1) In the following cases, namely, (a) upon the death or bankruptcy of any officer of a registered society or branch having in his possession by virtue of his office any money or property belonging to the society or branch; or (b) if any execution, attachment, or other process is issued, or action or diligence raised against any such officer or against his property, his heirs, executors, or administrators, or trustee in bankruptcy, or the sheriff or other person executing the process, or the party using the action or diligence respectively, shall, upon demand in writing of the trustees of the society or branch, or of any two of them, or of any person authorised by the society or branch

or by the committee thereof, to make the demand, pay the money, and deliver over the property to the trustees of the society or branch in preference to any other debt or claim against the estate of the officer. (2) In this section the expression "bankruptcy" shall include liquidation of a debtor's affairs by arrangement in England, *Cessio bonorum* of a debtor in Scotland, and a petition for arrangements with creditors in Ireland; and the expression "trustee in bankruptcy" shall include a judicial factor in Scotland, and an assignee in Ireland. Upon the bankruptcy of an officer of a friendly society the trustees are, under this sub-section, entitled to preferential payment of sums received by him by virtue of his office, notwithstanding that these sums cannot be specifically traced, and are not at the time of the bankruptcy in his actual possession (*Re Miller, Ex parte Official Receiver*, [1893] 1 Q. B. 327; 57 J. P. 469; 4 Digest 472, 4265, applied to the case of an ex-officer in *Re Filbeck*, [1910] 1 K. B. 136; 4 Digest 471, 4250).

The Trustee Savings Bank Act, 1863, s. 14 (17 Halsbury's Statutes 718), provides that the executors, trustees in bankruptcy, etc., of officers of savings banks shall pay any money due to savings banks before any other debts.

Note to
Section 33.

THE LOCAL GOVERNMENT (EMERGENCY PROVISIONS) ACT, 1916.

(6 & 7 GEO. 5, c. 12.)

An Act to make provision with respect to Officers and Servants of Local Authorities serving in or with His Majesty's Forces and to make various administrative provisions with a view to economy in money and labour in connection with the present War. [17th May 1916.]

This Act with the exception of ss. 2, 3, 16, 17, 18 and 23 (4), was originally temporary only, but by s. 1 and Sched. I. of the Expiring Laws Act, 1925 (18 Halsbury's Statutes 1182), the following sections were also made permanent: ss. 5 (now repealed), 12, 13 (1) (now repealed), (2) and (3), 14 (now repealed), 21, 22 except para. (3) and 24 (1) (10 Halsbury's Statutes 854, 856).

S. 17, which is now spent, was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183), and s. 13 (3) (10 Halsbury's Statutes 856) is repealed by the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 883.

PART I.

PROVISIONS AS TO OFFICERS OF LOCAL AUTHORITIES IN NAVAL OR MILITARY SERVICE.

1. . . .

This section, which related to the payments to officers, etc., of local authorities in naval or military service during the war which began in 1914, is now spent and was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183). The following cases which were decided under this section or contracts to the like effect may be of some assistance in arriving at the amounts payable under s. 3 of this Act, *infra*: *Sutton v. Att.-Gen.* (1923), 39 T. L. R. 295; 34 Digest 85, 629; *Adams v. Liverpool Corporation* (1927), 91 J. P. 106; *Aylott v. West Ham Corporation*, [1927] 1 Ch. 30; 90 J. P. 165; 34 Digest 85, 628; *Kelsey v. Birmingham Corporation* (1927), 92 J. P. 12; *Stevens v. Hampstead B. C.*, [1929] 2 Ch. 239; 45 T. L. R. 430; Digest Supp. See also the L. G. Staffs (War Service) Act, 1939 (32 Halsbury's Statutes 1118), for similar provisions enacted during the war which began in 1939.

2. If an officer or servant of a local authority dies whilst serving in or with His Majesty's forces, or in consequence of wounds or disease received or contracted during such service which prevented him from returning to the service of the local authority, the local authority shall have, and shall be deemed always to have had, power to make to his widow or other dependants such payments as could have been made to them under any superannuation scheme (whether established by statute or otherwise) in force in the district had he been actually serving the local authority at the time of his death.

Payments
under super-
annuation
schemes.

3.—(1) All service by an officer or servant of a local authority in or with His Majesty's forces for the purposes of the present war shall, for the purposes of any enactment providing for the superannuation of such officers and servants applicable to his case, be aggregated and reckoned with his

Reckoning
service for
superannua-
tion.

Section 3.

service as an officer or servant of the local authority, and, unless an agreement to the contrary has been made before the passing of this Act, he shall contribute to the superannuation fund (if any) the same amounts (if any) as he would have contributed if he had continued in their actual service and had received the normal remuneration of that service.

(2) For the purposes of calculating the amount of such contributions and of superannuation allowances the amount of the salary or wages and emoluments during the period of service in or with His Majesty's forces shall be deemed to be the amount which the officer or servant would have received during that period if he had remained in the actual service of the local authority (a).

4 & 5 Geo. 5,
c. 66.

(3) Nothing in this section shall affect the provisions of the Elementary School Teachers (Superannuation) Acts, 1898 to 1912 (b), or of the Elementary School Teachers (War Service Superannuation) Act, 1914.

As to service in connection with naval or military operations counting as actual naval or military service, see s. 21, *post*, p. 5151.

Reference may be made to the Local Government Superannuation Act, 1937, *ante*, p. 2057.

(a) As to the inclusion of war bonuses under a local Act, see *Cannon v. Southwark B. C.* (1929), 45 T. L. R. 403; Digest Supp. See also the cases cited in the note to s. 1, *ante*, p. 5149, as to the salary payable during war service.

(b) These Acts were amended by the School Teachers (Superannuation) Act, 1918 (7 Halsbury's Statutes 303), the School Teachers (Superannuation) Act, 1922 (*op. cit.*, 314), and the Teachers (Superannuation) Acts, 1924 and 1925 (*op. cit.*, 316, 317).

PART II.

MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

5. [*Repealed by the P. H. A., 1936, s. 346 (1), Sched. III., ante, pp. 720, 732.*]

Use of local
authority's
premises and
officers for
military
purposes.

6. The use of any institution, building, or other premises belonging to any local authority for the accommodation of sick or wounded sailors or soldiers, or for other purposes in connection with the present war, and any expenditure incurred in connection therewith, shall be deemed to be and always to have been lawful, and the service or employment of any officers or servants of a local authority in or about any institution, building, or other premises so used or otherwise, with the consent of the local authority, in connection with the present war shall be deemed for all purposes to be and always to have been service or employment under that local authority:

Provided that, except in the case of—

(a) a shire, county, town, or district hall and offices connected therewith; and

(b) the temporary use of other premises in case of urgent necessity; this section shall not authorise the use after the passing of this Act for such purposes as aforesaid of any such institution, building, or premises unless the approval of the appropriate Government department has been obtained.

This section was made permanent by the Expiring Laws Act, 1931 (24 Halsbury's Statutes 445), but only to such extent as it confers rights on officers or servants of a local authority in respect of their service or employment in or about certain premises.

* * * * *

Simplifying
mode of
giving
sanctions, etc.

12.—(1) Notwithstanding any statutory or other provision requiring a sanction, assent, approval, authority or direction of the [Minister of Health] to be given, altered or varied by order or by instrument under seal, any such sanction, assent, approval, authority or direction may be given, altered or varied in a letter or other writing signed by a secretary or assistant secretary of the [Ministry], and shall be as valid in all respects and shall have the same effect as if it had been given by an order of the [Minister] or by an instrument under the seal of the [Minister], and for the purposes of the Documentary

Evidence Act, 1868, as amended by any subsequent enactment, such letter or writing shall be deemed to be an order of the Board. **Section 12.**

(2) This section shall not apply to Scotland or Ireland.

"Minister of Health" and "Minister" or "Ministry" have been substituted for Local Government Board and Board throughout this section in consequence of Ministry of Health Act, 1919, *post*, p. 5191. The section was made permanent by the Expiring Laws Act, 1925 (18 Halsbury's Statutes, 1181).

31 & 32 Vict.
c. 37.

13.—(1) . . .

(2) A local authority shall not be required to report to the Local Government Board the proceedings of its assessment committee or to make to that Board any return of the superannuation allowances and gratuities paid under the Poor Law Officers' Superannuation Act, 1896.

This sub-section, so far as it relates to assessment committees, has not been repealed, but see now Sched. I., r. 7, of the R. and V. Act, 1925, *ante*, p. 2237.

Removal of
obligation to
make certain
returns and
reports
23 & 24 Vict.
c. 51.
40 & 41 Vict.
c. 68.
45 & 46 Vict.
c. 50.

14. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1276.]

Provisions as
to audit.
56 & 57 Vict.
c. 73.

* * * * *

16. *Every joint committee and every joint board constituted or to be constituted under subsection (3) of section sixty-four of the National Insurance Act, 1911, shall be a body corporate by such name as the Board by which it is constituted may direct, and shall have perpetual succession and a common seal and may hold land for the purposes of their powers and duties without licence in mortmain.*

Incorporation
of joint com-
mittees, etc.,
under 1 & 2
Geo. 5, c. 55.

This section was repealed by P. H. (Tuberculosis) Act, 1921, s. 9 (2), now itself repealed.

17. . . .

This section which is now spent was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Amendment of
5 & 6 Geo. 5,
c. 76, s. 1,
as to casual
vacancies.

18. . . .

This section related to the contributions made by a local or district committee under Naval and Military War Pensions, etc. (Expenses) Act, 1916, s. 2. It is now repealed by Naval and Military War Pensions, etc. (Administrative Expenses) Act, 1917, s. 10 (3).

* * * * *

PART III.

GENERAL.

21. For the purposes of this Act the expression "local authority" means any person or body of persons who receive or expend the proceeds of any local rate and any other public body which the [Minister of Health] may determine to be a local authority, but overseers of the poor (a) shall not be included except by direction of that [Minister]: **Interpretation.**

Provided that where any such authority is a police authority it shall not, as such, be deemed, for the purposes of Part I. of this Act, to be a local authority.

In England and Wales a teacher, officer, or servant appointed by the managers of a public elementary school not provided by the local education authority shall, and a teacher, officer, or servant of an institution aided by a local education authority out of the proceeds of any rate, may, if that authority think fit, be deemed, for the purposes of this Act, to be an officer or servant of the local education authority concerned.

Where the Board of Education certify to the [Minister of Health] that it is expedient that this Act shall apply to any public educational institution, this Act shall apply thereto, notwithstanding any trust affecting the institution, as if the managers or other governing body of the institution were a local authority, and the teachers, officers, and servants of the institution were officers and servants of a local authority.

Section 21. For the purposes of this Act, or for such of them as may be specified by the [Minister of Health], service in connection with naval or military operations which that [Minister] considers may properly be treated in the same manner as actual naval or military service shall be deemed to be service with His Majesty's forces.

Except where the context otherwise requires the expression "allowances" means the separation allowances made to the wives and families and dependants of sailors and soldiers, and includes family allowances for soldiers living at their own homes in the United Kingdom.

The expression "civil remuneration" includes the salary or wages and other emoluments which the officer or servant would have been receiving if he had remained in the actual service of the local authority.

"Minister of Health" and "Minister" have been substituted throughout this section for "Local Government" and "Board" in consequence of Ministry of Health Act, 1919, *post*, p. 5191.

(a) Overseers were abolished by the R. & V. Act, 1925, s. 62, *ante*, p. 2222. Their powers and duties have been in the main transferred to the rating authority. See, however, the Overseers Order, 1927, *ante*, p. 3595.

22. [Application to Scotland.]

* * * * *

Short title and duration.

24.—(1) This Act may be cited as the Local Government (Emergency Provisions) Act, 1916.

(2) *This Act, except the provisions of sections two, three, sixteen, seventeen, eighteen and paragraph (4) of section twenty-three thereof, shall have effect only during the continuance of the present war and afterwards for such period or periods (if any) not exceeding one year as the Local Government Board may fix; and the Board may fix different periods for different provisions of the Act.*

This sub-section was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183), but its effect had meantime been varied, see the first note on p. 5149, *ante*.

THE GAS (STANDARD OF CALORIFIC POWER) ACT, 1916.

(6 & 7 GEO. 5, c. 25.)

An Act to authorise as respects gas undertakings the substitution of a standard of calorific power for a standard of illuminating power (a).

[3rd August, 1916.]

Power to substitute standard of calorific power for standard of illuminating power.

1.—(1) Where, by virtue of any Act or Order confirmed by Act of Parliament regulating the undertaking of any company, authority, or person authorised to supply gas in any area in the United Kingdom (hereinafter referred to as the undertakers), the gas supplied by the undertakers is required to be of a prescribed illuminating power, and the undertakers are liable to penalties in the case of the illuminating power of the gas provided by them being less than, or being less by a prescribed extent than, such prescribed illuminating power, then on application being made by the undertakers the appropriate Government department (b) may, if they think it expedient, and subject to such conditions, if any, as they consider proper, including such variation as they may think desirable of the prescribed pressure at which the gas is to be supplied, by order—

(a) substitute for the prescribed standard of illuminating power a prescribed standard of calorific power;

(b) exempt the undertakers from penalties in respect of a deficiency in illuminating power and substitute for the provisions imposing such penalties provisions imposing penalties in the case of deficiency in calorific power; and

(c) substitute for the provisions as to testing for illuminating power **Section 1.**
provisions as to testing for calorific power ;
and on the making of such an order the Act or Order regulating the under-
taking shall have effect as amended by the order.

(2) In considering the expediency of making such an order the department shall have special regard to whether the undertakers have erected and worked, or are prepared to erect and work, suitable crude benzol recovery plant for the production of benzol and toluol.

(3) Before making an order under this section the appropriate Government department (*b*) shall require the undertakers to give public notice, in such manner as the department may consider best adapted for informing persons affected, of the application for an order under this section, and of the calorific standard proposed to be adopted, and as to the manner in which and time within which objections may be made, and shall consider any objections which may be duly made, and shall, where they think it expedient to do so, hold an inquiry, and the costs (if any) incurred by the department in connection with the inquiry shall be borne by the undertakers.

(4) For the purposes of this section "the appropriate Government department" means—

(a) in cases where the undertakers are a local authority, the Local Government Board (*c*), or the Secretary for Scotland, or the Local Government Board for Ireland, as the case may be ; and

(b) in any other case, the Board of Trade.

(a) The special Act or order applicable to a gas undertaking makes provision for a standard of illuminating power, the minimum power usually required being a light equal to fourteen sperm candles. For some time past, however, conditions have changed, consequent on the introduction of the incandescent gas mantle and the development of the use of gas for cooking, heating, and power, whereby the importance of a high illuminating power is greatly lessened. The Act provides that, subject to certain conditions, a standard of calorific power may be substituted for the prescribed standard of illuminating power. See generally as to the latter standard the provisions of the Gasworks Clauses Act, 1871, *ante*, p. 4307.

See further as to the power of the Board of Trade to make orders providing for the repeal of any enactments or other provisions requiring the undertakers to supply gas of any particular illuminating or calorific value, and for substituting power to charge for thermal units supplied in the form of gas, the Gas Regulation Act, 1920, Vol. V., *post*. The Gas Undertakings Act, 1929, Vol. V. and 8 Halsbury's Statutes 1293, requires the Board of Trade to make such orders in the case of undertakers supplying more than 20 million cubic feet of gas in any year subsequent to 1927.

(b) See the definition of this expression in sub-s. (4).

(c) The powers under this Act were transferred to the Minister of Health by the Ministry of Health Act, 1919, s. 3 (1), *post*, p. 5191. They have again been transferred to the Board of Trade by an Order in Council made on November 9th, 1920, under sub-ss. (3) and (4) of the same section.

2. This Act may be cited as the Gas (Standard of Calorific Power) Act, Short title. 1916.

THE WAR CHARITIES ACT, 1916.

(6 & 7 GEO. 5, c. 43.)

An Act to provide for the Registration of Charities for purposes connected with the present War (a). [23rd August, 1916.]

1.—(1) It shall not be lawful to make any appeal to the public for donations or subscriptions in money or in kind to any war charity as herein-after defined, or to raise or attempt to raise money for any such charity by promoting any bazaar, sale, entertainment or exhibition, or by any similar means, unless the charity is registered under this Act and the approval in writing of the committee or other governing body of the charity has been

Prohibition against raising money for war charities unless registered.

Section 1. obtained, either directly or through any person duly authorised to give such approval on behalf of such governing body, and if any person contravenes the provisions of this section he shall be guilty of an offence against this Act:

Provided that this Act shall not apply to any collection at divine service in a place of public worship nor to any charity which may, under any regulations made under this Act, be exempted by the registration authority from the provisions of this section.

(2) *This section, so far as it relates to registration, shall not apply to any charity until the expiration of one month after the passing of this Act, nor to any charity pending the decision of the registration authority on an application for the registration of such charity made within such month (b).*

(a) This Act is repealed by the War Charities Act, 1940, Vol. V. and 33 Halsbury's Statutes 47, but is included in the present volume because of the duties it imposes on the councils of boroughs and urban districts in connection with the registration of charities for the blind to which it was applied by the Blind Persons Act, 1920, s. 3 (20 Halsbury's Statutes 595), and for which purpose it is saved from repeal by Proviso (a) to s. 14 (3) of the 1940 Act, Vol. V. and 33 Halsbury's Statutes 36.

(b) Repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Registration of
war charities.

2.—(1) The registration authority shall —

- (a) as respects the City of London, be the Mayor, Aldermen, and Commons of the City of London in common council assembled;
- (b) as respects a municipal borough or urban district, be the council of the borough or district;
- (c) elsewhere, be the county council (a):

(2) Applications for registration or exemption under this Act shall be sent to the registration authority for the area in which the administrative centre of the charity is situate, and any question as to where the administrative centre of any charity is situate shall be finally determined by the Charity Commissioners.

(3) The registration authority may, before registering any charity, make such inquiries with respect to the charity as they think fit, but shall not refuse to register any charity having its administrative centre within the area of the authority unless they are satisfied that the charity is not established in good faith for charitable purposes, or will not comply with the conditions imposed by this Act, or that it will not be properly administered.

(4) An appeal from a refusal by a registration authority to register any charity shall lie to the Charity Commissioners, and, if as the result of such appeal the Charity Commissioners determine that the application for registration ought not to be refused, the registration authority shall register the charity.

(5) Every registration authority shall give to each charity registered or exempted a certificate of registration or exemption, and shall keep a register of the charities registered by them under this Act, and lists of all charities registration of which has been refused by them and of all charities which have been exempted from registration by them, and shall send to the Charity Commissioners a copy of such register and such lists, and shall from time to time notify the Charity Commissioners of any changes in the particulars entered in the register and of changes in such lists.

(6) The Charity Commissioners shall keep a combined register of all charities registered under this Act, and a combined list of all charities in respect of which applications for registration under this Act have been refused, and a combined list of all charities which have been exempted from registration under this Act.

(7) . . . (b)

(8) Any expenses incurred by the London County Council under this Act shall be defrayed out of the county fund as expenses for general county purposes. Section 2.

(a) A proviso authorising any council to act through a committee was repealed by the L. G. A., 1933; see s. 85 of that Act, *ante*, p. 847.

(b) Repealed by the L. G. A., 1933, *ante*, p. 735.

3. Charities registered under this Act shall comply with the following conditions— Conditions to be complied with by registered charities.

- (i) the charity shall be administered by a responsible committee or other body consisting of not less than three persons; and minutes shall be kept of the meetings of the committee or other body in which shall be recorded the names of the members of the committee or other body attending the meetings;
- (ii) proper books of account shall be kept, and such accounts shall include the total receipts and the total expenditure of any collection, bazaar, sale, entertainment, or exhibition held with the approval of the governing body of the charity, and the accounts shall be audited at such intervals as may be prescribed by regulations under this Act by some person or persons approved by the registration authority, and copies of the accounts so audited shall be sent to the registration authority;
- (iii) all moneys received by the charity shall be paid into a separate account at such bank or banks as may be specified as respects the charity in the register;
- (iv) such particulars with regard to accounts and other records as the registration authority or the Charity Commissioners may require shall be furnished to the registration authority or the Charity Commissioners, and the books and accounts of the charity shall be open to inspection at any time by any person duly authorised by the registration authority or by the Charity Commissioners.

4. The Charity Commissioners may, subject to the approval of the Secretary of State, make regulations (a)— Regulations.

- (a) prescribing the forms for applications under this Act and the particulars to be contained therein;
- (b) prescribing the form of the registers to be kept under this Act and the particulars to be entered therein;
- (c) providing for the inspection of registers and lists kept under this Act, and the making and the furnishing and certification of copies thereof and extracts therefrom;
- (d) prescribing the fee (not exceeding ten shillings) to be paid on registration, and the fees for making or obtaining copies of, and extracts from, registers and lists;
- (e) requiring notification to the registration authority of any changes requiring alterations in the particulars entered in the register;
- (f) providing for the exemption of charities from this Act and prescribing the grounds of exemption;
- (g) generally for carrying this Act into effect.

(a) Various regulations under this section relating to war charities and to charities for the blind (to which this Act has been extended) have been made by the Commissioners. These are too long for insertion here, but they will be found in the annual volumes on Local Government published by Butterworth & Co.

5.—(1) The registration authority, if satisfied that any charity registered under this Act is not being carried on in good faith for charitable purposes, or is not complying with any of the conditions imposed under this Act, or is Removal from the register.

Section 5. not being properly administered, may remove the charity from the register, and shall notify such removal to the Charity Commissioners, and if they so remove it shall give public notice of its removal :

Provided that an appeal shall lie to the Charity Commissioners against the decision of the registration authority to remove a charity from the register.

(2) Where any charity is removed from the register the Charity Commissioners may, notwithstanding that an appeal is pending,—

(a) order any bank or other person who holds money or securities on behalf of the charity not to part with such money or securities without the authority of the Commissioners ;

(b) order any cash or securities held for any such charity to be paid or transferred to the Official Trustees of Charitable Funds and for that purpose may make, without any application to them for the purpose, any such order as they are authorised under section two of the Charitable Trusts Act, 1860, to make ;

28 & 24 Vict.
c. 136.

and if any person fails to comply with any such order he shall, without prejudice to any other liability, be guilty of an offence against this Act.

(3) The Charity Commissioners may also, where a charity is removed from the register, establish a scheme for the regulation of the charity in accordance with their ordinary jurisdiction under the Charitable Trusts Acts, 1853 to 1914, as if the charity were a charity within the jurisdiction of the Commissioners under those Acts, but without the necessity of any application being made for the purpose.

Powers of
Charity Com-
missioners for
purposes of
appeals.

6. For the purposes of an appeal under this Act the Charity Commissioners shall, in relation to charities registered or applying to be registered under this Act, have all such powers with respect to requiring accounts, statements, written answers to inquiries, the attendance of persons for examination on oath or otherwise, the production of documents, the furnishing of copies and extracts from documents, the examination of registers and records, and the transmission of documents for examination, as are exercisable by them under the Charitable Trusts Acts, 1853 to 1914, in relation to charities within the jurisdiction of the Commissioners under those Acts, and those Acts shall apply accordingly.

Powers as to
unregistered
war charities.

7.—(1) Where the Charity Commissioners are satisfied on the representation of the registration authority or a chief officer of police that there is reasonable ground for believing that any unregistered war charity is not being or has not been carried on in good faith for charitable purposes, or is not complying or has not complied with conditions substantially corresponding with the conditions imposed on registered charities under this Act, or is not being or has not been properly administered, the Commissioners may exercise as respects the charity any of the powers which are exercisable by them with respect to a charity which, having been registered under this Act, has been removed from the register, and for the purpose of an inquiry into any charity under this section the Charity Commissioners shall have such powers in relation to the charity as are conferred by this Act on the Commissioners for the purposes of appeals :

Provided that the Charity Commissioners shall not exercise the power of establishing a scheme for the regulation of any charity under this section without giving the charity a full opportunity of being heard.

(2) This section shall apply to unregistered war charities whether or not an application for registration has been made, and to war charities registration of which has been refused.

8. If any person in any application for registration or exemption or in any notification of any change requiring alterations in the registered particulars makes any false statement or false representation, or if any person falsely represents himself to be an officer or agent of a war charity, or if he fails to send any notification which he is required under this Act to send, he shall be guilty of an offence against this Act. Section 8.
False statements, etc.

9.—(1) Any person guilty of an offence against this Act shall be liable on summary conviction to a fine not exceeding one hundred pounds, or to imprisonment with or without hard labour for a term not exceeding three months. Penalties for offences.

(2) No proceedings for an offence against this Act shall be instituted except by or with the consent of the Charity Commissioners.

10. For the purposes of this Act—

The expression “war charity” means any fund, institution, or association (whether established before or after the commencement of this Act) having for its object or amongst its objects the relief of suffering or distress, the supply of needs or comforts, or any other charitable purpose connected with the present war, but shall not include any fund, institution or association established before the commencement of the present war where any such object as aforesaid is subsidiary only to the principal purposes of the charity (a), nor shall it include the Royal Patriotic Fund Corporation or the Statutory Committee or any local or district committee established under the Naval and Military War Pensions, etc., Act, 1915. Interpretation.
5 & 6 Geo. 5,
c. 83.

Any question whether a charity is a war charity shall be finally determined by the Charity Commissioners.

(a) A registered trade union may be a “war charity” within this Act as extended by Blind Persons Act, 1920 (20 Halsbury’s Statutes 593) (*Barber v. Chudley* (1922), 87 J. P. 69; Digest Supp.).

11. [*Application to Scotland.*]

12.—(1) This Act may be cited as the War Charities Act, 1916.

Short title and extent.

* * * * *

THE DEFENCE OF THE REALM (ACQUISITION OF LAND) ACT, 1916.

(6 & 7 GEO. 5, c. 63.)

An Act to make provision with respect to the possession and acquisition of land occupied or used for the Defence of the Realm in connection with the present War and for other purposes connected therewith (a).

[22nd December, 1916.]

1 (b).—[*Continuation of possession of land occupied for the purposes of the defence of the realm.*]

(a) This Act is amended by Defence of the Realm (Acquisition of Land) Act, 1920, Vol. V., *post*. Those parts of the Act which are now spent have been repealed by the S. L. R. A., 1927 (18 Halsbury’s Statutes 1183).

(b) Repealed by S. L. R. A., 1927.

2 (a).—[*Power to remove buildings and works.*]

(a) Repealed by S. L. R. A., 1927 (*op. cit.*).

Section 3. 3 (a).—[*Power to acquire land permanently.*]

(a) This section with the exception of sub-s. (7) was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(7) Any person having power (whether subject to any consent or conditions or not) to sell land authorised to be acquired by any Government department may, subject to the like consent and conditions, grant or demise the land in perpetuity or for any term of years to the Government department at such fee farm or other rent, secured by such condition of re-entry or otherwise as may be agreed upon, and with or without a right of renewal, or grant to the Government department an option to acquire the land:

Provided that, where the power to sell arises under the Settled Lands Acts, 1882 to 1890, the powers conferred by this section shall be exercised only with the consent of the trustees of the settlement for the purposes of those Acts, or with the sanction of the court.

User of land
acquired.

4. Any land which, or an interest in which, has been acquired under this Act may be used by any Government department for the purpose for which it was used during the war or for any other purpose for which it could have been used had the land been acquired under the Defence Acts, 1842 to 1873 (a), or the Military Lands Acts, 1892 to 1903 (b), notwithstanding that such user could, but for this Act, have been restrained as being in contravention of any covenant or for any other reason, and no person interested in any adjoining or neighbouring land or entitled to any riparian rights shall be entitled to restrain such user; but if, apart from this Act, any such person would have been entitled to restrain such user, then, if application for the purpose is made within three years after the date of the acquisition of the land under this Act or after the commencement of the user causing the depreciation, whichever may be the later, he shall,—

- (i) if the land is used for a purpose for which it could have been used had the land been acquired under the Defence Acts, 1842 to 1873, or the Military Lands Acts, 1892 to 1903, be entitled to such compensation in respect of any breach of a restrictive covenant or damage caused by the pollution, abstraction, or diversion of water, or by the emission of noxious fumes, as in default of agreement may be determined in manner provided by this Act (c); and
- (ii) if the land is used for any other purpose, be entitled to such compensation in respect of any damage occasioned by such user as in default of agreement may be determined in manner provided by this Act (c):

Provided that—

- (a) where such compensation is claimed in respect of any land, the department may, at any time before such claim is determined, and on payment of all costs properly incurred by the claimant in respect of his claim, require the claimant to sell the land or his interest therein at such price as would have been proper if the value of the land had not been so depreciated, such price in default of agreement to be determined in like manner as if the land had been acquired under section three of this Act; and
- (b) nothing in this section shall be construed as depriving any person of any right to recover damages in respect of any injury to property caused by accident due to such user as aforesaid; and
- (c) in the user of land or an interest in land acquired under this Act the provisions of the Alkali, &c. Works Regulation Act, 1906 (d), and the Rivers Pollution Prevention Acts, 1876 and 1893 (e), and of any local Act dealing with the like matters, shall be complied with, and those Acts shall apply accordingly, and

6 Edw. 7, c. 14.
39 & 40 Vict.
c. 75.
56 & 57 Vict.
c. 31.

nothing in this section shall affect the powers conferred by any Act, whether public, general or local, on any local authority, board of conservancy, or other public authority, with respect to the prevention of the pollution of rivers, or the abatement of nuisances caused by the emission of smoke or other noxious fumes. Section 4.

(a) These Acts are Defence Act, 1842; Defence Act, 1860; Defence Acts Amendment Act, 1873 (3 Halsbury's Statutes 467, 488, 500).

(b) These Acts are Military Lands Acts, 1892, 1897, 1900 and 1903 (17 Halsbury's Statutes 574, 589, 597, 599).

(c) See s. 8, *post*, p. 5161. See also the provision in Defence of the Realm (Acquisition of Land) Act, 1920, s. 1 (2), Vol. V., *post*, as to compensation in respect of the sale of land free from restrictive covenants.

(d) See the Act referred to, Alkali, etc., Works Regulation Act, 1906, *ante*, p. 5003.

(e) These Acts are Rivers Pollution Prevention Act, 1876, *ante*, p. 4581, and Rivers Pollution Prevention Act, 1893, *ante*, p. 4872.

5.—(1) Where any land or any interest therein has by virtue of this Act been acquired by any Government department, the department may at any time thereafter sell, lease, or otherwise dispose of the land or interest (a). Power to sell land acquired under Act.

(2) Where any such land is disposed of, then on the execution and delivery to the purchaser by the Government department concerned of the necessary or proper assurance of the land disposed of, the purchaser shall notwithstanding any defect in the title of such Government department thereto stand possessed thereof for such estate or interest as may be expressed or intended to be assured to him, freed and absolutely discharged (save as in the assurance may be expressed) from all prior estates, interests, rights, and claims therein or thereto:

Provided that if at any time after such disposition any such prior estate, interest, right, or claim as aforesaid is established by the person entitled thereto, there shall be paid to such person compensation to be determined in manner provided by the Lands Clauses Acts, as modified by this Act, with respect to interests in lands which by mistake have been omitted to be purchased (b).

(3) Before any Government department sell any land so acquired or interest therein they shall, unless such land is land upon which buildings of a permanent nature have been erected wholly or partly at the expense of the State or at the request of, or by arrangement with, any Government department, or is land used in connection with such buildings, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; *or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold (c).*

(4) If any such persons be desirous of purchasing such lands, then within six weeks after such offer they shall signify their desire in that behalf to the Government department concerned, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease.

(5) If any person entitled to such pre-emption be desirous of purchasing any such lands and such person and the Government department concerned do not agree as to the price thereof, or other consideration therefor, then such price or other consideration shall be determined in manner provided by this Act (d).

(6) The provisions of the last three foregoing subsections shall apply in the case of a lease of land for a term exceeding twenty-one years in like manner as they apply to a sale of land, except where the land is leased for the purpose of the development thereof in connection with any factory,

Section 5. building, camp, or other premises erected or established on land retained by the Government.

(a) As to the power to dispose of land free from restrictive covenants, see Defence of the Realm (Acquisition of Land) Act, 1920, s. 1, Vol. V., *post*.

(b) The provisions of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4104, as to interest in lands which by mistake have been omitted to be purchased, are contained in ss. 124—126 of that Act, *ante*, pp. 4149, 4150. The schedule to this Act does not modify these provisions, except in so far as it affects compensation generally.

(c) This provision, and that in each of the three following sub-sections, take the place of the sections of the Lands Clauses Consolidation Act, 1845, ss. 128—131 (2 Halsbury's Statutes 1159), which were expressly excluded from incorporation in this Act by r. 2 of the Schedule. The words in italics are repealed by Defence of the Realm (Acquisition of Land) Act, 1920, s. 2 (1), Vol. V., *post*.

(d) See s. 8, *post*, p. 5161.

Provisions as to highways.

6.—(1) Where, in the exercise or purported exercise of any prerogative right of His Majesty or any powers conferred by or under any enactment relating to the defence of the realm, or by agreement, or otherwise, for purposes connected with the present war, any railway or tramway or any cable line or pipes have been laid along, across, over, or under any public highway, it shall be lawful after the termination of the war (a) for the railway or tramway or the cable line or pipes to continue to be used and maintained along, across, over, or under the highway, subject to such conditions as the Board of Trade (b), in the case of railways and tramways, and in other cases as the Commission (c) after giving the local authority (d) and the authority or person responsible for the maintenance of the highway or of any other railway or tramway laid thereon an opportunity of being heard, may by order prescribe, and any such authority or person may apply to the Board or Commission to make such an order :

Provided that where any such railway or tramway crosses the roadway on the level it shall not be lawful to use the crossing after the expiration of two years from the termination of the present war (a) without the consent of the local authority (e).

(2) In the event of the use of any such railway or tramway (f) being discontinued, the Government department by whom it was laid down or used shall take up and remove the rails and restore the highway on which they are laid to the satisfaction of the authority or person responsible for the maintenance of such highway.

(3) Where in exercise of any such right or powers as aforesaid any public highway has been closed, it may be kept closed after the termination of the present war (a), but not, by virtue of this section, beyond the expiration of twelve months after such termination unless the consent of the Commission is obtained (g), and the Commission before giving such consent shall give to the local authority and the authority or person responsible for the maintenance of the highway an opportunity of being heard, and the Commission may require as a condition of their consent the provision of another highway in the place of the highway so closed, and any person interested in any land adjoining any highway so closed who suffers loss or damage in consequence of the closing thereof shall be entitled to such compensation as, in default of agreement, may be determined in manner provided by this Act to be the amount of such loss or damage (h).

(4) For the purposes of this section the expression "local authority" means, in the case of a borough or urban district, the council of the borough or urban district, and elsewhere the county council.

(5) Where any such railway, tramway, cable line, or pipes have been laid along, across, over, or under any public highway, or a public highway has

been closed, in pursuance of an agreement with, or subject to any undertaking given to, the authority or person responsible for the maintenance of the highway, nothing in this section shall authorise the continuance of the user of the railway, tramway, cable line, or pipes, or the continuance of the closing of the highway beyond the time specified in the agreement or undertaking without the consent of the authority or person so responsible.

Section 6.

(a) As to the date of the termination of the war see the Termination of the Present War (Definition) Act, 1918, *post*, p. 5190. By an Order in Council under that Act dated August 10th, 1921, the date fixed was August 31st, 1921 (S. R. & O. (1921), No. 1276).

(b) Now M. of T. (see Ministry of Transport Act, 1919 (*post*, p. 5197), and orders made thereunder).

(c) That is the Railway and Canal Commission.

(d) See sub-s. (4).

(e) See sub-s. (4). As to the right of appeal where the consent is unreasonably withheld see s. 4 (2) of the Act of 1920, Vol. V., *post*. See also the power of the Commission to grant an extension of time under this section in s. 1 (1) of the Railway and Canal Commission (Consents) Act, 1922, Vol. V., *post*.

(f) Note, not a cable line or pipes.

(g) See also the Railway and Canal Commission (Consents) Act, 1922, Vol. V., *post*, and *Secretary of State for War v. Middlesex County Council* (1923), 39 T. L. R. 357; 21 L. G. R. 291; Digest Supp.

(h) As to the assessment of compensation, see s. 8, *infra*.

7 (a).—[Provisions as to water, light, heat, and power companies and authorities.]

(a) Repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

8.—(1) All questions as to compensation or as to the purchase price of land or any interest therein to be paid under this Act shall,—

- (a) if both parties agree within such time as may be allowed by the Commission, be determined by a single arbitrator agreed by the parties;
- (b) if either party so requires within such time as may be allowed by the Commission, be referred to such one of a panel of referees to be appointed in like manner as the panel appointed under Part I. of the Finance (1909–10) Act, 1910, as may be selected by the Reference Committee as defined by section thirty-three of that Act, whose decision shall, subject to an appeal to the Commission on any question of law, be final (a);
- (c) in any other case, be determined by the Commission.

(2) The provisions of the Railway and Canal Traffic Act, 1888 (b), as amended by any subsequent enactment, relating to the procedure for the determination of questions by the Commission under that Act, including the provisions relating to appeals, shall apply to the determination of questions, including appeals from referees, referred to the Commission under this Act, as if they were herein re-enacted and in terms made applicable to this Act:

Provided that—

- (a) the Commission may in any case in which they think it expedient to do so call in the aid of one or more assessors specially qualified, and hear the case wholly or partially with the assistance of such assessors;
- (b) the Commission may hold a local enquiry for the purposes of this Act by any one of their members, or by any officer of the Commission or other person whom they may direct to hold the same, and the said provisions of the Railway and Canal Traffic Act, 1888, except the provisions relating to appeals, shall, so far as applicable, apply to such enquiries, and any officer or person directed to hold an enquiry shall have power to administer

Determination
of questions by
Railway and
Canal Com-
mission.

10 Edw. 7, c. 8.

51 & 52 Vict.
c. 25.

Section 8.

an oath and shall report the result of the enquiry to the Commission;

- (c) the Commission may act by two of their members, one of whom shall be the judge;
- (d) the discretion of the Commission with respect to costs shall be subject to the provisions of the Lands Clauses Acts as modified by this Act as to costs, in cases where those Acts as so modified apply, but shall not be limited in the manner provided by section two of the Railway and Canal Traffic Act, 1894 (c).

57 & 58 Vict.
c. 54.

(a) Under the Finance (1909-10) Act, 1910, s. 33, the Reference Committee for England is to consist of the Lord Chief Justice, the Master of the Rolls, and the President of the Surveyors' Institution. By s. 34 of the same Act, such number of persons, being persons who have been admitted Fellows of the Surveyors' Institution or other persons having experience in the valuation of land as may be appointed by the Reference Committee, are to form a panel of persons to act as referees for the purposes of Part I. of the Act. The provision that the decisions of the referee shall be final may be compared with Revenue Act, 1911, s. 7, under which the Commissioners of Inland Revenue have a right of appeal from the decision of a referee.

(b) See the Act, *ante*, p. 4705.

(c) Under the Act of 1888, *ante*, p. 4705, the Commissioners have no power to award costs on either side unless they are of opinion that either the claim or the defence has been frivolous or vexatious (Railway and Canal Traffic Act, 1894, s. 2 (14 Halsbury's Statutes 251)). But this does not apply to cases under this Act, and in cases where the Lands Clauses Act applies the Commissioners have the powers conferred by r. 10 of the Sched.

Payment of
compensation
and purchase
money.

9. Until Parliament otherwise determines, all compensation and purchase money payable by a Government department under this Act, and all other expenses incurred by any Government department thereunder, shall be defrayed out of money provided by Parliament.

Evidence of
certificate by
Government
department.

10. For the purposes of this Act a certificate by any Government department—

- (a) that possession has been taken of any land for purposes connected with the present war; or
 - (b) that the department is in possession of such land or is the occupying department within the meaning of this Act; or
 - (c) that any sums therein specified have been expended by the State in erecting, constructing, or making buildings, works, or improvements for purposes connected with the present war on, over, or under any land; or
 - (d) that any such buildings, works, or improvements have been erected, constructed, or made with the consent of the occupying department at the expense of a person not being a person interested in the land; or
 - (e) that a railway or tramway has been laid along, across, over, or under a public highway, or that a public highway has been closed, in the exercise of any prerogative right of His Majesty, or any powers conferred by or under any enactment relating to the defence of the realm for purposes connected with the present war; or
 - (f) that water, light, heat, or power has been supplied to any premises on the requisition or at the request of a Government department for purposes connected with the present war;
- shall be *prima facie* evidence of the facts therein stated (a).

(a) The certificate is only *prima facie* evidence, and it may be rebutted by evidence contradicting it on any of the points above mentioned.

Application of
building laws.

11.—(1) Any street, building, or work which has been formed, erected, or constructed otherwise than in accordance with the provisions of any general or local Acts relating to streets or buildings, and with any byelaws or

regulations made thereunder on any land to which section one of this Act applies, or which has been acquired under section three thereof, shall, unless the authority by whom such provisions, byelaws, or regulations are enforced consent to the continuance thereof, either be so altered as to comply with such provisions, byelaws, or regulations, or be discontinued or removed within such reasonable time, not being less than two years, after such land or building has ceased to be occupied by a Government department as such authority may order, and the owner (as defined by such Acts, byelaws, or regulations) shall have power to enter upon and carry out any works without the consent of any other person, and if he fails to comply with such order such authority as aforesaid may remove any such building or work and recover the expense incurred in such removal from the owner in a summary manner as a civil debt (a).

(2) If any person feels aggrieved by the neglect or refusal of such authority to give its consent, or by the conditions on which such consent is given, or as to the time within which such discontinuance or removal is ordered, he may appeal to the Local Government Board (b), whose decision shall be final and shall have effect as if it were a decision of the authority: Provided that the Board may before considering any such appeal require the appellant to deposit such sum not exceeding ten pounds to cover the costs of appeal as may be fixed by rules to be made by them.

(a) That is to say, in manner provided by the Summary Jurisdiction Act, 1879, ss. 6, 35 (11 Halsbury's Statutes 325, 342).

(b) Now the Minister of Health.

12.—(1) For the purposes of this Act, and of the provisions of the Lands Interpretation. Clauses Acts incorporated with this Act, land includes any building or part of a building, any pier, jetty, or other structure on the shore or bed of the sea or any river, and any easement or right over or in relation to land.

(2) Where consideration has been given or an advance made by the State for the erection, construction, or making of any building, work, or improvement on over or under any land for purposes connected with the present war, or where any money which would otherwise have been payable to the State has with the consent of a Government department been applied towards the erection, construction, or making of any such building, work, or improvement, the building, work, or improvement shall for the purposes of this Act be deemed to have been erected, constructed, or made wholly or partly, as the case may be, at the expense of the State.

(3) For the purposes of this Act, except where the context otherwise requires, the expression "building" includes machinery and plant fixed or attached to the building, the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882 (a), and any town or village green, and any other land subject to any right of common; the expression "open space" shall mean any land laid out as a public garden or public park or used for the purposes of public recreation; and the expression "allotment" shall mean any allotment set out for any public purpose under an Inclosure Act or award.

(4) For the purposes of this Act references to the Defence Acts, 1842 to 1873, and the Military Lands Acts, 1892 to 1903, shall include references to those Acts as applied by the Naval Works Act, 1895 (b).

(5) For the purposes of this Act a competent naval or military authority acting under the Acts relating to the Defence of the Realm shall be deemed to be a Government department.

58 & 59 Vict.
c. 35.

(a) With these Acts must now be read the Commons Act, 1899. See s. 24 of that Act, *ante*, p. 4982.

**Note to
Section 12.**

(b) See the notes to s. 4, *ante*, p. 5158, as to the Defence Acts, 1842—1873 (3 Halsbury's Statutes 467, 500) and the Military Lands Acts, 1892—1903 (17 Halsbury's Statutes 574, 599). The Naval Works Act, 1895 (17 Halsbury's Statutes 585), extends these Acts with some modifications to the Admiralty and His Majesty's Naval Forces.

13 (a).—[Savings.]

(3) Where possession has been taken of any land under any agreement authorising the retention of the land for any period specified in the agreement, nothing in this Act shall authorise the retention of possession after the expiration of such period without the consent of the person with whom the agreement was made or the persons deriving title under him.

(a) This section, with the exception of sub-s. (3), was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1118).

**Saving of
powers.**

14. The powers conferred by this Act shall be in addition to and not in derogation of any other right or power of His Majesty (a).

(a) As to the powers of the Crown by virtue of the Royal Prerogative to take possession of land for the defence of the realm without compensation, see *Re a Petition of Right*, [1915] 3 K. B. 649; 11 Digest 546, 498; *Sheffield Conservative and Unionist Club, Ltd. v. Brighton* (1916), 85 L. J. K. B. 1669; 11 Digest 548, 509; *A.-G. v. De Keyser's Royal Hotel*, [1920] A. C. 508; 11 Digest 546, 499.

* * * * *

Short title.

17. This Act may be cited as the Defence of the Realm (Acquisition of Land) Act, 1916.

Section 3 (5).

SCHEDULE (a).

(a) This schedule was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1118).

THE PREVENTION OF CORRUPTION ACT, 1916.

(6 & 7 Geo. 5, c. 64.)

An Act to amend the Law relating to the Prevention of Corruption (a).
[22nd December 1916].

(a) This Act amends the Public Bodies Corrupt Practices Act, 1889, and the Prevention of Corruption Act, 1906. The effect of the amendments will be found stated in the notes to these Acts, *ante*, pp. 4796, 5027.

Increase of
maximum
penalty in
certain cases.
6 Edw. 7,
c. 34.
52 & 53 Vict.
c. 69.

1. A person convicted on indictment of a misdemeanour under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with His Majesty or any Government Department or any public body (b), or a subcontract to execute any work comprised in such a contract, be liable to penal servitude for a term not exceeding seven nor less than three years :

Provided that nothing in this section shall prevent the infliction in addition to penal servitude of such punishment as under the above-mentioned Acts may be inflicted in addition to imprisonment, or prevent the infliction in lieu of penal servitude of any punishment which may be inflicted under the said Acts.

(b) See s. 4 (2), *post*, p. 5165.

2. Where in any proceedings against a person for an offence under the Prevention of Corruption Act, 1906, or the Public Bodies Corrupt Practices Act, 1889, it is proved that any money, gift, or other consideration has been paid or given to or received by a person in the employment of His Majesty or any Government Department or a public body by or from a person, or agent of a person (*a*), holding or seeking to obtain a contract from His Majesty or any Government Department or public body (*b*), the money, gift, or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such Act unless the contrary is proved.

Section 2.
—
Presumption
of corrup-
tion in
certain
cases.

(*a*) See s. 4 (3), *infra*.

(*b*) See s. 4 (2), *infra*.

3. Notwithstanding anything in the Summary Jurisdiction Acts proceedings under the Prevention of Corruption Act, 1906, instituted with a view to obtaining a summary conviction for an offence thereunder may be commenced at any time before the expiration of six months after the first discovery of the offence by the prosecutor.

Time for
taking pro-
ceedings

4.—(1) This Act may be cited as the Prevention of Corruption Act, 1916, and the Public Bodies Corrupt Practices Act, 1889, the Prevention of Corruption Act, 1906, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 1916.

Short title
and interpre-
tation.

(2) In this Act and in the Public Bodies Corrupt Practices Act, 1889, the expression "public body" includes, in addition to the bodies mentioned in the last-mentioned Act, local and public authorities of all descriptions (*a*).

(*a*) In the Act of 1889, *ante*, p. 4796, the expression "public body" is defined to mean any council of a county or county of a city or town, any council of a municipal borough, also any board, commissioners, select vestry, or other body which has power to act under and for the purposes of any Act relating to local government or the public health, or to poor law, or otherwise to administer money raised by rates in pursuance of any public general Act, but does not include any public body existing elsewhere than in the United Kingdom.

(3) A person serving under any such public body is an agent within the meaning of the Prevention of Corruption Act, 1906, and the expressions "agent" and "consideration" in this Act have the same meaning as in the Prevention of Corruption Act, 1906, as amended by this Act (*b*).

(*b*) In the Act of 1906, *ante*, p. 5027, the expression "agent" is defined to include a person serving under the Crown or under any corporation or any municipal borough, county or district council or any board of guardians. It also includes any person employed by or acting for another. And the expression "consideration" includes valuable consideration of any kind.

THE FINANCE ACT, 1917.

(7 & 8 GEO. 5, c. 31.)

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and to amend the Law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance.

[2nd August 1917.]

* * * * *

Power of
trustees, etc.
to borrow
and invest
in war
securities.

35.—(1) It shall be lawful and shall be deemed always to have been lawful for a trustee to borrow for the purpose of subscribing to or investing in any securities which have been or may be issued in connection with any Government loan raised for the purpose of the present war, and a trustee shall not be liable for any loss resulting from any borrowing so authorised or from any subscription to or investment in such securities or the sale of any securities for the purpose of such subscription or investment, or from the exercise of any option to convert any securities into securities so issued, whether such borrowing, subscription, investment or sale, or the exercise of such option, was before or after the passing of this Act; and trustees and other persons acting in any fiduciary character [are hereby expressly authorised to exercise such powers of borrowing, subscription, investment, sale, or conversion, notwithstanding anything to the contrary in any instrument creating the trust and without the consent of any other person, notwithstanding that such consent is required by the instrument creating the trust]:

Provided that—

- (a) In the case of transactions after the passing of this Act, a trustee shall before borrowing for the purpose aforesaid give notice of his intention so to do to the persons for the time being beneficially entitled to the income of the trust fund and the amount borrowed shall not exceed the value for the time being of the trust fund;
 - (b) For the purpose of transactions after the passing of this Act the power to borrow for the purpose of investing in any such securities shall be deemed not to include a power to borrow for the purpose of purchasing any such securities at any time after the subscription list has been closed, or, in the case of any such securities which are issued on application from day to day, after the issue thereof has been discontinued.
- (2) This section shall apply to any officer or department who hold funds on account of or for the benefit of any persons or class of persons as part of, or in consequence of, the duties of the officer or department, but shall not apply to any trustee under an implied or constructive trust, except a resulting trust arising on the determination or failure of an express trust.
- (3) The foregoing provisions of this section, so far as they relate to the exercise of such powers as aforesaid before the passing of this

Act, shall apply to local and other public authorities, notwithstanding any limitations on their powers, in like manner as they apply to trustees. Section 35.

(4) It is hereby declared that the power conferred by subsection (6) of section one of the War Loan Act, 1916, on companies and bodies of persons and persons responsible for the direction and management of a company or body of persons to hold government securities purchased in pursuance of the powers conferred by that subsection is not limited to the continuance of the present war and a period of twelve months thereafter.

The powers conferred by the said subsection shall include, and shall be deemed as from the commencement of the war to have included, a power on the part of a company or body of persons and of persons responsible for the direction or management of the company or body to borrow, notwithstanding any such limitations as are mentioned in that subsection, for the purpose of investing in or purchasing Government securities in accordance with that subsection.

The securities in which local authorities can invest money for the purpose of a loans fund or a sinking fund are enumerated in the Trustee Act, 1925, s. 1, Vol. V., *post*. Under this Act an investment in war securities made prior to the passing of the Act was legalised.

The words in square brackets were inserted, in substitution of the original wording, with retrospective effect by Finance Act, 1918, s. 39 (16 Halsbury's Statutes 833).

REPRESENTATION OF THE PEOPLE ACT, 1918.

(7 & 8 Geo. 5, c. 64.)

An Act to amend the Law with respect to Parliamentary and Local Government Franchises, and the Registration of Parliamentary and Local Government Electors, and the conduct of elections, and to provide for the Redistribution of Seats at Parliamentary Elections, and for other purposes connected therewith (a). [6th February 1918.]

(a) Only those portions of this Act which affect local authorities are included in this work. Reference should be made to the Ministry of Health (Registration and Elections, Transfer of Powers) Order, 1921, *ante*, p. 2617, for the transfer of powers under this Act from the Minister of Health (as successor to the L. G. B.) to the Secretary of State.

The Act has been materially amended by the Representation of the People Act, 1922, Vol. V., *post*, the Rating and Valuation Act, 1925, *ante*, p. 2113, the Economy (Miscellaneous Provisions) Act, 1926, Pt. III. (separately entitled the Representation of the People (Economy Provisions) Act, 1926), Vol. V. and 7 Halsbury's Statutes 649, and the Representation of the People (Equal Franchise) Act, 1928, Vol. V., *post*. The effect of these amendments is noted in the sections affected.

PART I.

FRANCHISES (b).

(b) The local government franchise enacted by this Act take the place, as far as respects local government elections within the meaning of the Act, of all local government franchises existing at the time of the passing of the Act (see s. 42, *post*, p. 5177).

* * * * *

Section 3.

Local gov-
ernment
franchise
(men).

3. ["A person shall be entitled to be registered as a local government elector for a local government electoral area (a) if he or she is of full age and not subject to any legal incapacity, and—

(a) is on the last day of the qualifying period (b) occupying (c) as owner or tenant any land or premises in that area; and

(b) has during the whole of the qualifying period (b) so occupied (c) any land or premises in that area, or, if that area is not an administrative county or a county borough, in any administrative county or county borough in which the area is wholly or partly situate; or

(c) is the husband or wife of a person entitled to be so registered in respect of premises in which both the person so entitled and the husband or wife, as the case may be, reside (d):

Provided that—

(i) for the purposes of this section a person who inhabits any dwelling-house by virtue of any office, service, or employment, shall, if the dwelling-house is not inhabited by the person in whose service he or she is in such office, service, or employment, be deemed to occupy the dwelling-house as a tenant; and

(ii) for the purposes of this section the word tenant shall include a person who occupies a room or rooms as a lodger (e) only where the room or rooms is or are let to that person in an unfurnished state; and

(iii) for the purpose of paragraph (c) of this section, a naval or military voter who is registered in respect of a residence qualification which he or she would have had but for his or her service shall be deemed to be resident in accordance with that qualification."]

The provision set out above is the substituted section which was contained in s. 2 of the Representation of the People (Equal Franchise) Act, 1928, Vol. V., *post*. By that section it is provided that "for the purpose of providing that the local government franchise shall be the same for men and women sub-section (3) of section 4 of the principal Act shall be repealed and the following section shall be substituted for section three of that Act." As this section is the only provision of the 1928 Act, Vol. V., *post*, relevant to this work it has been thought more convenient to embody it in the text of this Act.

(a) See as to this expression, s. 41 (2), *post*, p. 5176.

(b) See ss. 6 and 7 (4), *infra*, and *post*, p. 5170.

(c) As to occupation, see s. 7 (1), *post*, p. 5169.

(d) As to residence, see s. 7 (2), *post*, p. 5169.

(e) As to the difference between an occupier and a lodger, see the cases cited, *ante*, pp. 1189 *et seq*.

Local gov-
ernment
franchise
(women).

4. . . .

Repealed by s. 2, Representation of the People (Equal Franchise) Act, 1928, Vol. V., *post*. The present local government franchise for women is governed by the substituted s. 3 set out, *supra*.

* * * * *

Qualifying
period.

6. ["The qualifying period shall be three months ending on the first day of June and including that day:

Provided that in the application of this section to a person who is a naval or military voter, or who has been serving as a member of the naval, military, or air forces of the Crown at any time during the said three months and has ceased so to serve, one month shall be substituted for three months as the qualifying period.”]

Section 6.

The section set out in the text is the substituted section enacted by s. 9 (2) (b) and Sched. III. of the Economy (Miscellaneous Provisions) Act, 1926, Vol. V. and 7 Halsbury's Statutes 649, 650. That Act which substituted one register a year for two reduced the qualifying period from 6 months to 3 months.

7.—(1) Where land or premises are in the joint occupation of two or more persons, each of the joint occupiers shall, for the purposes of this Part of this Act, be treated as occupying the premises, subject as follows :—

Supple-
mental pro-
visions as to
residence
and occu-
pation.

* * * * *

(c) Not more than two joint occupiers shall be entitled to be registered in respect of the same land or premises, unless they are bonâ fide engaged as partners carrying on their profession, trade or business on the land or premises.

(2) Residence in a house or the occupation of a house shall not be deemed to be interrupted for the purposes of this Act by reason only of permission being given by letting or otherwise for the occupation of the house as a furnished house by some other person [“for part of the “qualifying period not exceeding two months in the whole, or where the “occupation of the person giving the permission commenced more than “six months before the last day of the qualifying period, for not more “than four months in the whole during that period of six months”] or by reason only of notice to quit being served and possession being demanded by the landlord of the house; but the express enactment of this provision shall not affect in any way the general principles governing the interpretation of the expression “residence” and cognate expressions.

Residence is not required for the local government franchise except under s. 3 (a), *ante*, p. 5168.

The words in brackets were substituted for the words “for part of the qualifying period not exceeding four months in the whole” by s. 9 (2) (b) and Sched. III. of the Economy (Miscellaneous Provisions) Act, 1926, Vol. V. and 7 Halsbury's Statutes 649, 650.

Further provision with regard to interruption of residence is made by the Representation of the People Act, 1921, s. 1 (7 Halsbury's Statutes 646), which as amended by the Economy (Miscellaneous Provisions) Act, 1926, Vol. V. and 7 Halsbury's Statutes 650, reads as follows:

“The residence of a person in any premises shall not be deemed to have been interrupted for the purposes of the Representation of the People Acts, 1918 to 1920, by reason only of the fact that that person has been absent from the premises during part of the qualifying period, not exceeding two months at any one time or if the residence commenced more than six months before the last day of the qualifying period during a part of those six months not exceeding four months at any one time, in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him; but the express enactment of this provision shall not affect in any way the general principles governing the interpretation of the expression ‘residence’ and cognate expressions.”

Section 7.

(4) Notwithstanding anything in this Act, a person shall not be entitled to be registered as a local government elector for a local government electoral area though that person may have been occupying land or premises in the area on the last day of the qualifying period, if that person commenced to occupy the land or premises within thirty days before the end of the qualifying period, and ceased to occupy the land or premises within thirty days after the commencement of the occupation.

Right of
person regis-
tered to
vote.

8. . . .

(2) A person registered as a local government elector for any local government electoral area (a) shall while so registered (and in the case of a woman notwithstanding sex or marriage) be entitled to vote at a local government election for that area (b); but where, for the purposes of election, any such area is divided into more than one ward or electoral division, by whatever name called, a person shall not be entitled to vote for more than one such ward or electoral division.

Notwithstanding anything in this provision a person may be registered for more than one such ward or division of a local government electoral area (not being a municipal borough), and may vote in any such ward or division for which he is registered at an election to fill a casual vacancy.

(a) See as to this expression s. 41 (2), *post*, p. 5176.

(b) See the next section as to disqualifications for voting.

* * * * *

Provisions
as to
disqualifica-
tions.

9.—(1) A person shall not be disqualified from being registered or from voting as a parliamentary or local government elector by reason that he or some person for whose maintenance he is responsible has received poor relief or other alms (a).

(a) The statutes imposing disqualifications of this nature (Representation of the People Act, 1832, s. 36; Representation of the People Act, 1867, s. 40; Divided Parishes and Poor Law Amendment Act, 1876, s. 14) are repealed by this Act.

(2) . . .

This sub-section which imposed a temporary disqualification on "conscientious objectors" is now spent and has been repealed by the S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(3) A person shall not be entitled to be registered or to vote as a parliamentary or local government elector if he is not a British subject, and nothing contained in this Act shall, except as expressly provided therein, confer on any person who is subject to any legal incapacity to be registered or to vote either as a parliamentary or local government elector any right to be so registered or to vote.

(4) A person shall not be disqualified from voting at any election as a parliamentary or local government elector by reason that he is employed for payment by or on behalf of a candidate at such election, so long as the employment is legal.

(5) Any incapacity of a peer to vote at an election arising from the status of a peer (b) shall not extend to peeresses in their own right.

(b) A peer cannot vote at a parliamentary election (*Earl Beauchamp v. Madresfield (Mansfield) Overseers* (1872), L. R. 8 C. P. 245; *sub nom. Salisbury (Marquis) v.*

Bontems, Bulwer and South Mimms Overseers, 37 J. P. 39 ; 20 Digest 9, 29 ; Mackenzie and Lushington's Registration Manual, p. 297).

Note to
Section 9.

10. [Repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., ante.] Provision as to qualification of councillor.

PART II.

REGISTRATION.

This part of the Act has been amended by the Economy (Miscellaneous Provisions) Act, 1926, Part III. of which may be cited as the Representation of the People (Economy Provisions) Act, 1926, Vol. V. and 7 Halsbury's Statutes 649). The effect of these provisions is that one register only will be prepared each year and that the requirements of the 1918 Act as to the autumn register are to apply to the preparation of that register. The qualifying period is also reduced, see the substituted section 6, *ante*, p. 5168. All references to the spring register in the provisions of the 1918 Act cease to have effect and have accordingly been printed in italics in the text. The material parts of the Act of 1926 will be found set out in Vol. V. and 7 Halsbury's Statutes 649, 650.

11.—(1) Two (a) registers of electors shall be prepared in every year, *Spring and autumn registers.* of which one (in this Act referred to as the *spring register*) shall be made for the qualifying period ending on the fifteenth day of January (a), and the other (in this Act referred to as the *autumn register*) shall be made for the qualifying period ending on the [first day of June] (b).

(a) One register only has now to be prepared, and references to the spring register cease to have effect, see the Economy (Miscellaneous Provisions) Act, 1926, Vol. V. and 7 Halsbury's Statutes 649.

(b) The qualifying period now ends on June 1st, see s. 6, *ante*, p. 5168.

(2) The *spring register* shall come into force on the commencement of the fifteenth day of April and remain in force until the fifteenth day of October, and (a) the autumn register shall come into force on the commencement of the fifteenth day of October and remain in force until the fifteenth day of [October in the next following year] (b).

(a) See note (a) to s. 11 (1), *supra*.

(b) The words in brackets give effect to s. 9 (2) (a) of the Economy (Miscellaneous Provisions) Act, 1926, Vol. V. and 7 Halsbury's Statutes 649.

(3) If for any reason the registration officer fails to compile a fresh *spring* or (a) *autumn register* for his area or any part of his area, the register in force at the time when the fresh register should have come into force shall continue to operate as the register for the area or part of an area in respect of which default has been made.

(a) See note (a) to s. 11 (1), *supra*.

12.—(1) Each parliamentary borough and each parliamentary county shall be a registration area, and there shall be a registration officer for each registration area. *Registration officers and areas.*

(2) Where the registration area is a parliamentary county and is coterminous with, or wholly contained in, one administrative county, the clerk of the county council, and where the registration area is a parliamentary borough and is coterminous with, or wholly contained in, one municipal borough, the town clerk of the borough, shall be the registration officer for the area.

Section 12. In any other case such clerk of the county council, or town clerk, shall be registration officer for the area as the Local Government Board (a) may by order direct, subject to any conditions which may be made by the order as to the appointment of deputies for any part of the area.

See the special provisions as to urban districts and London contained in s. 16. *post*, p. 5174.

(a) Throughout this Act as set out herein for "Local Government Board" must now be read "Secretary of State," to whom the powers and duties of the Minister of Health were transferred by the Ministry of Health (Registration and Elections, Transfers of Powers) Order, 1921.

As to fees payable under this Act to the clerk of a metropolitan borough council who by this section *necessarily* became the registration officer forming part of the "emoluments of his office" of town clerk for the purposes of superannuation, see *Stoke Newington Corporation v. Richards*, [1930] 1 K. B. 222; 94 J. P. 27; Digest Supp.

(3) Any of the duties and powers of the registration officer may be performed and exercised by any deputy for the time being approved by the Local Government Board, and the provisions of this Act shall apply to any such deputy so far as respects any duties or powers to be performed or exercised by him as it applies to the registration officer.

(4) In the event of any vacancy in the office of any clerk of the county council or town clerk who is a registration officer, or in the event of his incapacity to act, any acts authorised or required to be done by or with respect to the registration officer may be done by or with respect to any person temporarily appointed in that behalf by the chairman of the county council or the mayor, as the case may be.

Registration
duties.

13.—(1) It shall be the duty of the registration officer to compile the *spring and* (a) autumn register, and to place, or cause to be placed, on the register in accordance with the rules set out in the First Schedule to this Act the names of those entitled to vote as parliamentary electors or local government electors in his registration area, and to comply with any general or special directions which may be given by the Local Government Board with respect to the arrangements to be made by the registration officer for carrying out his duties as to registration.

If a registration officer refuses, neglects or fails without reasonable cause to perform any of his duties in connection with registration, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(2) His Majesty may by Order in Council prescribe the forms to be used for registration purposes and any fees to be taken in connection therewith, and alter the rules contained in the First Schedule to this Act for the purpose of carrying this Act into full effect, or for carrying into effect any Act for the time being in force amending or affecting this Act.

The rules contained in the First Schedule to this Act and any Order so made shall have effect as if enacted in this Act (b).

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) See as to the effect of this provision *Ex parte Ringer* and the other cases cited therewith in the note under s. 295 of the P. H. A., 1875, *ante*, p. 4506.

14.—(1) An appeal shall lie to the county court, as defined by rules of court (a), from any decision of the registration officer on any claim or objection which has been considered by him under this Act, or the placing of or refusal to place any mark against any name on the register, and rules of court (a) shall be made for the purpose of determining the procedure on any such appeals and for applying and adapting thereto any enactments relating to county courts and the procedure therein : Section 14.
Appeals.

Provided that an appeal shall not lie where a claimant or objector (b) has not availed himself of his opportunity, as provided in the First schedule to this Act, of being heard by the registration officer on the claim or objection, or as to the placing of or refusing to place any such mark as aforesaid.

(a) See the County Court (Registration Appeals) Rules, S. R. & O., 1918, No. 802, L. 27, and amending Rules, S. R. & O., 1918, No. 938; S. R. & O., 1919, No. 162 and S. R. & O., 1925, No. 645.

(b) The claimant or objector must appeal personally, and an appeal by an election agent is not sufficient (*Hampshire Parliamentary County Registration Officer v. Ainslie* (1933), 97 J. P. 121; 148 L. T. 496; Digest Supp.).

(2) An appeal shall lie on any point of law from any decision of the county court on any such appeal from the registration officer in accordance with rules of the Supreme Court to the Court of Appeal, but no appeal shall lie from the decision of the Court of Appeal.

See the Registration Appeals Rule, 1918, Rules of the Supreme Court, O. 58, r. 21.

(3) The right of voting of any person whose name is for the time being on the register shall not be prejudiced by any appeal pending under this section, and any vote given in pursuance of that right shall be as good as if no such appeal were pending, and shall not be affected by the subsequent decision of the appeal.

(4) Notice shall be sent to the registration officer in manner provided by rules of court of the decision of the county court or of the Court of Appeal on any appeal under this section, and the registration officer shall make such alterations in the electors lists or register as may be required to give effect to the decision.

(5) On any appeal under this section the registration officer shall be deemed to be a party to the proceedings.

(6) If the Lord Chancellor is satisfied on the representation of the judge of any county court that the judge is unable, owing to the necessity of dealing with appeals under this Act, to transact the business of the court with proper despatch, the Lord Chancellor may appoint a barrister of at least seven years' standing to act as assistant judge for such time as the Lord Chancellor may direct, and subject to any conditions which he may impose.

Any assistant judge so appointed shall have all the powers and privileges and may perform any of the duties of the judge, whether under this Act or otherwise, to whom he has been appointed assistant.

An assistant judge shall be paid out of moneys provided by Parliament such remuneration and travelling allowances as may be allowed by the Treasury.

In the application of this provision to a county court district the whole

Section 14. of which is within the Duchy of Lancaster, the Chancellor of the Duchy shall be substituted for the Lord Chancellor.

Expenses of
registration.

15.—(1) Any expenses properly incurred by a registration officer in the performance of his duties in relation to registration, including all proper and reasonable charges for trouble, care and attention in the performance of those duties (a), and any costs incurred by him as party to an appeal (in this Act referred to as “registration expenses”) shall be paid by the council whose clerk the registration officer is, or by whom he is appointed, subject, in cases where the registration area is not coterminous with or wholly contained in the area of that council, to such contributions by the council of any other county or borough as the Local Government Board may direct (b).

Any such expenses shall be paid in the case of the council of a county . . . if the case requires as expenses for special county purposes. . . .

The residue of this section was repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1290.

The Public Authorities Protection Act, 1893, *ante*, p. 4875, as amended by the Limitation Act, 1939, applies to an action for recovery of these expenses (*Mountain v. Bermondsey B. C.*, [1942] 1 K. B. 204; [1941] 3 All E. R. 498).

(2) The Treasury may frame a scale of registration expenses applicable to all or any class or classes of those expenses, and may alter the scale as and when they think fit.

Any expenses incurred by the registration officer of a class to which the scale is applicable shall be taken to be properly incurred if they do not exceed the maximum amount determined by or in accordance with the scale, and so far as they do exceed that amount shall be taken not to have been properly incurred unless the excess is specially sanctioned by the council and the Treasury either before or after the expenses have been incurred.

If any question arises whether any expenses incurred by the registration officer of a class to which the scale is not applicable have been properly incurred or not, that question shall be referred to the Local Government Board, and the decision of the Board on the question shall be final.

The Scales of Registration Expenses now in force are prescribed by an order of 1926 (S. R. & O., 1926, No. 1376).

(3) Any fees or other sum received by the registration officer in respect of his duties as such officer, other than sums paid to that officer in respect of his registration expenses, shall be accounted for by that officer and paid to the credit of the fund or rate out of which the expenses of that officer are paid.

(4) There shall be paid out of moneys provided by Parliament to the council of any county or borough in aid of the fund or rate out of which any registration expenses are paid by the council, in accordance with this Act, one half of the amount so paid by the council.

(5) On the request of the registration officer of any registration area for an advance on account of registration expenses, the council whose clerk the registration officer is may, if they think fit, make such an advance to him of such amount and subject to such conditions as the council may approve.

16.—(1) Where an urban district is coterminous with a registration area which is a parliamentary borough or is wholly contained in such area, this Part of this Act shall apply to that district as it applies to a municipal borough, with the substitution of the clerk of the urban district council for the town clerk, of the urban district council for the council of the borough. . . .

Section 16.

Special provisions with respect to urban districts and London.

The concluding words of this section were repealed by the L. G. A., 1933, s. 307, Sched. XI., Pt. IV., *ante*, pp. 1194, 1290.

17.—(1) A freeman of the City of London, being a liveryman of one of the several companies who is entitled to be registered as a parliamentary elector in respect of a business premises qualification within the city, shall be entitled, if he thinks fit, to be entered in a separate list of liverymen in the register of parliamentary electors, and to record his vote for Parliament as a liveryman.

Special provision as to registration of freemen, etc.

(2) The foregoing provision shall apply to the freemen of any borough if the council of the borough so resolve, and the expression "freemen" shall include any persons by whatever name called enjoying in that borough rights similar to those enjoyed by freemen of the city of London in that city.

18. Every person who is an assistant overseer at the time of the passing of this Act, and who suffers any direct pecuniary loss in consequence of this Act, shall be entitled to have compensation paid to him as registration expenses by the council responsible for the payment of registration expenses, and in determining such compensation—

Compensation to existing officers.

- (a) regard shall be had to the conditions and other circumstances required by subsection (1) of section one hundred and twenty of the Local Government Act, 1888, in regard to cases of compensation under that section; and
- (b) the compensation shall not exceed the limit therein mentioned; and
- (c) the expression in subsection (1) of that section "The Acts and rules relating to Her Majesty's Civil Service" shall mean the Acts and rules relating to His Majesty's Civil Service which were in operation at the date of the passing of the Local Government Act, 1888; and
- (d) the provisions of subsections (2) to (7) of the same section shall apply with such modifications (including the substitution of the "Local Government Board" for the "Treasury") as may be required, and including in subsection (2) the substitution of the words "next before the thirtieth day of September, nineteen hundred and fourteen" for the words "next before the passing of this Act."

51 & 52 Vict. c. 41.

In this section the expression "assistant overseer" includes any person executing any of the duties of overseer, and receiving payment therefor.

* * * * *

35. The following Acts, that is to say,—
The Ballot Act, 1872;

Certain Acts to have per-

Section 35.

manent
effect.

38 & 39 Vict.
c. 84.

41 & 42 Vict.
c. 41.

43 Vict. c. 18.

47 & 48 Vict.
c. 70.

59 & 60 Vict.
c. 1.

The Parliamentary Elections (Returning Officers) Act, 1875 ;
The Parliamentary Elections Returning Officers Expenses (Scotland)
Act, 1878 ;

The Parliamentary Elections and Corrupt Practices Act, 1880 ;

The Corrupt and Illegal Practices Prevention Act, 1883 ;

The Municipal Elections (Corrupt and Illegal Practices) Act, 1884 ;

The Local Government (Elections) Act, 1896 ;

shall become permanent Acts, and any provision in any Act in force
at the date of the passing of this Act which limits the period for which
any of those Acts are to remain in operation shall cease to have effect.

These Acts, now made permanent, had previously been renewed from year to
year by the Expiring Laws Continuance Acts.

PART V.**GENERAL.**

* . . . *

Regulations
to be laid be-
fore Parlia-
ment.

40.—(1) All rules, regulations, or provisions made by Order in
Council under this Act shall be laid before each House of Parliament
forthwith ; and unless and until an address is presented to His Majesty
by either House of Parliament within the next subsequent twenty-one
days on which that House has sat next after any such rule, regulation, or
provision is laid before it, praying that the rule, regulation, or provision
may be annulled, the rule, regulation, or provision shall have effect as
if enacted in this Act.

(2) Any Order in Council under this Act may be revoked or varied
as occasion requires by any subsequent Order in Council.

Interpreta-
tion.

41. In this Act, unless the context otherwise requires,—

(2) The expression “ local government electoral area ” means the
area for which any county council, municipal borough council,
metropolitan borough council, district council, board of
guardians, parish council, or any other body elected at the
time of the passing of this Act by persons on the local govern-
ment register or on the register of parochial electors is elected ;
and the expression “ local government election ” means an
election for any such council, board, or body :

Boards of guardians have now ceased to exist and their functions are transferred to
county and county borough councils (L. G. A., 1929, s. 1, Vol. V. and 10 Halsbury’s
Statutes 883).

(5) A person who is an inmate or patient in any prison, lunatic asylum,
workhouse, poorhouse, or any other similar institution shall
not by reason thereof be treated as resident therein for any
purpose of this Act :

(7) For the purposes of registration a person’s age shall be taken to
be that person’s age on the last day of the qualifying period :

(8) The expression “ dwelling-house ” includes any part of a house
where that part is occupied separately as a dwelling-house :

Section 41.

(9) [The yearly value of land or premises shall—

- (a) if the gross value thereof for rating purposes appears in the valuation list for the time being in force, be taken to be the gross value as so appearing, any necessary apportionment of that value being made by the registration officer :
- (b) if no gross value thereof for rating purposes appears in the valuation list, but the value thereof is assessed under Schedule A. of the Income Tax Act, 1918, as amended by any subsequent enactment, be taken to be the gross annual value of the land or premises for income tax purposes, any necessary apportionment of that value being made by the registration officer :
- (c) in any other case, be taken to be the amount which would, in the opinion of the registration officer, have been the gross value for rating purposes of the land or premises under the enactments relating to rating and valuation in force on the sixth day of February, nineteen hundred and eighteen.]

This substituted sub-section is enacted by s. 80 of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 934, consequent upon the derating provisions of Part V. of that Act, Vol. V. and 10 Halsbury's Statutes 927.

As to the cases in which gross value does not appear in the valuation list, see s. 22 (1) (b) of the R. and V. Act, 1925, *ante*, p. 2169, and Rule 5, Col. 7, of the R. and V. Act (Form of Valuation List) Rules, 1932, *ante*, pp. 3659, 3663 *et seq.*, and s. 67 (2) of the L. G. A., 1929, Vol. V. and 10 Halsbury's Statutes 928. Power is given to obtain copies of the annual values for income tax purposes from surveyors of taxes by s. 81, *ibid.*, Vol. V. and 10 Halsbury's Statutes 934.

(11) The expression "prescribed" means prescribed by His Majesty by Order in Council.

42. The parliamentary and the local government franchises enacted by this Act shall take the place of all parliamentary and, so far as respects local government elections within the meaning of this Act, of all local government franchises existing at the time of the passing of this Act; and the provisions set out in the Sixth Schedule to this Act with respect to the adaptation of Acts shall have effect for the purpose of adapting the law to the provisions of this Act.

Adaptation
of Acts.

45. The provisions of this Act shall apply to the Isles of Scilly as if those isles were an administrative county, and as if the council of those isles were a county council, and any expenses incurred by the council under this Act shall be paid as general expenses of the council.

Application
of Act to the
Isles of Scilly.

46. . . .

Repealed, S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Commence-
ment of
Act and
first regis-
ter.

47.—(1) *The enactments mentioned in the Eighth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.*

Repeal and
short title.

Repealed, S. L. R. A., 1927 (*op. cit.*).

(2) This Act may be cited as the Representation of the People Act, 1918.

Schedule.

Sections 13,
14 (1).

Separate
part of
register
for each re-
gistration
unit.

Separate
divisions for
parliamentary
and
local govern-
ment elec-
tors.

Register to
be made up
in street or
alphabetical
order.

Effect of
register.

Duty of
registration

SCHEDULES.

FIRST SCHEDULE.

REGISTRATION RULES.

Form of Register.

1. The register shall be framed in separate parts for each registration unit in the registration area.

The registration unit shall be the parish where the parish is wholly contained in one voting area, and where a parish is contained in more than one voting area, shall be each part of the parish contained in a separate voting area; and for the purposes of this rule the expression "voting area" means any polling district, electoral division, borough, county district other than a borough, and any ward of a borough, county district, or parish, and any other area for which a separate election at which the register is to be used is held.

2. The register shall, as respects each registration unit, contain the names of those who are entitled to vote as parliamentary electors and of those who are entitled to vote as local government electors, but shall be framed so as to show in separate divisions the names of those who are entitled to vote both as parliamentary and local government electors, the names of those who are entitled to vote as parliamentary electors but not as local government electors, and the names of those who are entitled to vote as local government electors, but not as parliamentary electors.

Where a person whose name is entered as a local government elector in any registration unit is not entitled to vote in respect of that entry at the local government elections for all the local government electoral areas which comprise that unit, the registration officer shall place a mark against his name, with a note to signify that the person against whose name the mark is placed is not entitled to vote for the local government elections mentioned in the note, and any such note shall be deemed to be part of the register.

* * * * *

4. Where the registration unit is situated in a parliamentary borough, the names in the register shall be arranged in street order, unless the authority whose clerk the registration officer is or by whom he is appointed considers that, having regard to the general character of the area forming the registration unit, arrangement in street order is inapplicable; and where the registration unit is situated in a parliamentary county, the names in the register shall be arranged in alphabetical order, unless the said authority considers that, having regard to the general character of the area forming the registration unit, arrangement in street order is possible and convenient.

5. The registers for the registration units making up any constituency, so far as they relate to parliamentary electors, shall together form the register of parliamentary electors for that constituency, and the registers of the registration units making up any local government electoral area, so far as they relate to local government electors, shall together form the register of local government electors for that area.

Duty of Registration Officer to prepare and publish Lists.

6. It shall be the duty of the registration officer to cause a house to house or other sufficient inquiry to be made, and to prepare or cause

to be prepared lists (in this Act referred to as electors lists) for each registration unit within his registration area of all persons appearing to be entitled to be registered as parliamentary or local government electors in the spring and (a) autumn register respectively, and to publish those lists in the form in which the register is to be framed, as respects the lists for the spring register on or before the first day of February (a) and as respects the lists for the autumn register on or before the [fifteenth day of July] (b).

The registration officer shall at the same time publish a notice specifying the mode in which, and the time within which, claims and objections are to be made under these rules.

(a) See (a) note to s. 11 (1), *ante*, p. 5171.

(b) July 15th was substituted for August 1st (Representation of the People Act, 1922, s. 1 and Sched. Pt. I., Vol. V., *post*). See the substituted schedule at Vol. V., *post*.

7. The registration officer, where he does not himself perform the duties of overseers, may require the overseers of any parish which, or any part of which, forms a registration unit within his registration area to make the necessary inquiries and to prepare the electors lists for that unit and publish the lists in the unit on his behalf, and it shall be the duty of the overseers to furnish lists as so required, and also at any time, if required by the registration officer, to furnish that officer with information respecting any persons resident or occupying land or premises in their parish, or the removal of any person from the parish.

Any reasonable expenses incurred by the overseers in performing any duties required of them in pursuance of this rule (including reasonable remuneration where the duties are performed by an assistant overseer or other paid officer) shall be paid by the registration officer as part of his registration expenses. In this rule the expression "overseers" includes any person for the time being executing any of the duties of overseers.

Overseers having been abolished by s. 62 of the R. and V. Act, 1925, *ante*, p. 2222, the duties of overseers under this provision are transferred to the rating authority subject to Art. 3 of the Overseers Order, 1927 (S. R. & O., 1927, No. 52), *ante*, p. 3596. That order provides that if the registration officer so requires the rating authority shall designate one or more of their officers to perform the duties of overseers under this provision. Any dispute as to whether a designated officer is an officer to whom the work can properly be assigned is to be determined by the Home Secretary.

A designation may be revoked by the rating authority on their own initiative or on a notification by the registration officer that the assistance of the designated officer will not be required by him, but a revocation or notification if given between April 30th and October 15th will not have effect until October 15th in the same year. Notice of revocation by a rating authority must be given to the registration officer.

8. The registration officer shall publish, together with the electors lists, the corrupt and illegal practices list (if any) made by him under section thirty-nine of the Corrupt and Illegal Practices Prevention Act, 1883, or made by or sent to him under section twenty-four of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884.

Claims to be Registered.

9. Any person who claims to be entitled to be registered as a parliamentary or local government elector, and who is not entered, or is entered in an incorrect place or manner or with incorrect particulars on the electors lists, may claim to be registered, or to be registered correctly, by sending to the registration officer a claim in the prescribed

Schedule 1. Section 6.

officer to prepare electors lists.

Duty of overseers to prepare electors lists and furnish information if required.

Corrupt and illegal practices list.

Claim to be registered or is sent to registration officer.

Schedule 1. form not later than *the eighteenth day of February where the claim is for the spring register, and (a) the [seventh] (b) day of August where the claim is for the autumn register.*

Section 9.

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) "Seventh" is substituted by the Economy (Miscellaneous Provisions) Act, 1926, Sched. III., Vol. V. and 7 Halsbury's Statutes 650. See the Schedule substituted by that Act in Representation of the People Act, 1922, Vol. V., *post*.

Form of claim.

10. The form of claim for a person making a claim on his own behalf shall contain a declaration of the qualification of the claimant to be registered, including a declaration that the claimant has attained the required age, and is a British subject, and of the character in which the claimant desires to be registered, that is to say, either as a parliamentary elector, or as a local government elector, or as a local government elector who is not entitled to vote for all local government elections, and where the claimant claims in respect of a non-residential qualification a declaration of residence or, in case such person has no settled residence, an address to which communications may be sent. A note shall also be added to the form warning the claimant that any false declaration for the purpose of this provision will involve a penalty.

Where a claim is made on behalf of a claimant by another person, the registration officer shall not enter the name of the claimant on the register, unless the matters required to be stated in the declaration under the foregoing provision are proved to his satisfaction.

Publication of lists of claimants.

11. It shall be the duty of the registration officer to publish the lists of claimants, *as respects the lists for the spring register not later than the twenty-fourth day of February, and (a) as respects the lists for the autumn register not later than the [thirteenth] (b) day of August.*

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) See the substituted Schedule to the Representation of the People Act, 1922, Vol. V., *post*.

Objections.

Notice of objections.

12. Any person whose name appears on the electors lists for a constituency or local government electoral area may object to the registration of any person whose name is included in the electors lists for the constituency or the local government electoral area, as the case may be, by sending notice of objection in the prescribed form to the registration officer not later than *the fifteenth day of February in the case of the spring register and (a) the [thirty-first day of July] (b) in the case of the autumn register, and may object to the registration of any person whose name is included in the list of claimants by sending notice of objection in the prescribed form to the registration officer not later than the seventh day of March in the case of the spring register and (a) the [eighteenth day of August] (b) in the case of the autumn register.*

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) See the substituted schedule to the Representation of the People Act, 1922, Vol. V., *post*.

Notice to persons affected by objection.

13. The registration officer shall, as soon as practicable after receiving any notice of objection, send a copy of the notice to the person in respect of whose registration the notice of objection is given.

Publication of objections to lists.

14. It shall be the duty of the registration officer to publish a list of the names of persons to whose registration notice of objection has been given *not later than the twenty-first day of February in the case of the spring register*

and (a) not later than the [thirteenth] (b) day of August in the case of the autumn register. Schedule 1.
Section 14.

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) See the substituted schedule to the Representation of the People Act, 1922, Vol. V., *post*.

15. It shall be the duty of the registration officer to publish a list of the names of persons included in the list of claimants to whose registration notice of objection has been given as soon as practicable after *the seventh day of March in the case of the spring register and (a) the [eighteenth day of August] (b) in the case of the autumn register.* Publication
of objections
to claims.

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) See the substituted schedule to the Representation of the People Act, 1922, Vol. V., *post*.

Absent Voters List.

* * * * *

Preparation of the Register from the Lists.

20. The registration officer shall, as soon as practicable, consider all objections of which notice has been given to him in accordance with these rules, and for that purpose shall give at least five clear days' notice to the objector and to the person in respect of whose registration the notice of objection has been given, of the time and place at which the objection will be considered by him. Considera-
tion of
objections.

21. The registration officer shall also consider all claims of which notice is given to him in accordance with these rules, and in respect of which no notice of objection is given, and, if he considers that the claim may be allowed without further inquiry, shall give notice to the claimant that his claim is allowed. Considera-
tion of
claims.

If the registration officer is not satisfied that any such claim can be allowed without inquiry, he shall give at least five clear days' notice to the claimant of the time and place at which the claim will be considered by him.

22. If on the consideration of any claim or objection it appears to the registration officer that the claimant, or person in respect of whose name objection is taken, is not entitled to be entered on the register in the character in which he claims to be registered, or in which he is entered on the list, but is entitled to be entered on the register in another character or in another place on the register, the registration officer may decide that the name of that person shall be so entered on the register. Supplemen-
tal powers on
consideration
of claims and
objections.

23. The registration officer shall make such additions and corrections in the electors lists (including the absent voters list) as are required in order to carry out his decisions on any objections or claims, and shall also make any such corrections in those lists by way of the removal of duplicate entries (subject to any expression of choice by the person affected as to those entries), the expunging of the names of persons who are dead or subject to any legal incapacity, or the placing of marks or the correction of marks placed against the name of an elector, or otherwise as he thinks necessary in order to secure that no person is registered as a parliamentary elector in respect of more than one qualification in the same constituency, or as a local government elector in respect of more than one qualification— Correction
of lists.

(a) in the same borough for the purpose of borough council elections; or

Schedule 1.
Section 24.

(b) in the same electoral division or ward for the purpose of county council, metropolitan borough council, and urban district council elections ; or

(c) in the same parish or ward of a parish for the purpose of rural district council, guardians, or parish elections ;

and otherwise to make those lists complete and accurate as a register.

* * * * *

Objections to
corrections.

25. Where the registration officer makes any correction in the lists (including the absent voters list) otherwise than in pursuance of a claim or objection, or for the purposes of correcting a clerical error, he shall give notice to the person affected by the correction, and give that person an opportunity of objecting to the correction, and, if necessary, of being heard with respect thereto.

Formation
of lists into
register.

26. The registration officer shall make all the necessary corrections of the lists (including the absent voters list) and do everything necessary to form those lists into a register (with a separate letter and a separate series of numbers for each polling district) in time to allow the publication of the lists so corrected as a register as required by these rules.

Duty to publish and deliver Copies of the Register.

Publication
of register.

27. It shall be the duty of the registration officer to publish *the spring register not later than the fifteenth day of April, and (a) the autumn register not later than the fifteenth day of October in each year, by publishing a notice that a copy of the register is open to inspection at his office, and that copies of the part of the register relating to any registration unit are open to inspection during business hours in the registration unit at the place mentioned in the notice.*

It shall be the duty of the registration officer to keep copies of the register for inspection in his office, and also to arrange for copies of the part of the register relating to any registration unit being kept for inspection in that unit either in the principal post office (if the Postmaster General gives authority for the purpose) or at some other convenient place to which the public have access to be arranged by him.

It shall be the duty of the registration officer to transmit a copy of the register, as soon as may be after it is published, to the Local Government Board (b).

(a) See note (a) to s. 11 (1), *ante*, p. 5171.

(b) Now the Home Secretary, to whom the powers, etc., of the Minister of Health in respect of registration and elections were transferred by the Ministry of Health (Registration and Elections, Transfer of Powers) Order, 1921.

Delivery of
copies of the
register.

28. It shall be the duty of the registration officer, on the application of any person during business hours and on payment of the prescribed fee, to furnish copies to the applicant of the register or of so much of the register as relates to any registration unit.

Appeals from Registration Officer.

Notice of
appeal from
registration
officer.

29. A person desiring to appeal against the decision of a registration officer must give notice of appeal in the prescribed form to the registration officer and to the opposite party, if any, when the decision is given or within five days thereafter, specifying the grounds of appeal.

The registration officer shall forward any such notices to the county court in manner directed by rules of court together, in each case, with a statement of the material facts which, in his opinion, have been established in the case, and of his decision upon the whole case and on any

point which may be specified as a ground of appeal, and shall also furnish Schedule 1.
to the court any further information which the court may require and Section 29.
which he is able to furnish.

30. Where it appears to the registration officer that any notices of Appeals
appeal given to him are based on similar grounds, he shall inform the relating to
county court of the fact for the purpose of enabling the county court the same
(if the court thinks fit) to consolidate the appeals, or select a case as a point.
test case.

General.

31. Where the registration officer by these rules is required to publish Publication
any document, and no specific provision is made as to the mode of of documents.
publication, he shall publish the document by making copies of the
document available for inspection by the public in his office, and in the
chief post office (if the Postmaster General gives authority for the purpose),
or some other convenient place in the area forming the registration unit
to which the document relates and, if he thinks fit, in any other manner
which is, in his opinion, desirable for the purpose of bringing the contents
of the document to the notice of those interested.

Any document required to be published shall be kept published for the
prescribed time.

Any failure to publish a document in accordance with these rules
shall not invalidate the document, but this provision shall not relieve
the registration officer from any penalty for such a failure.

If any person without lawful authority destroys, mutilates, defaces
or removes any notice published by the registration officer in connection
with his registration duties, or any copies of a document which have
been made available for inspection in pursuance of these rules, he shall
be liable on summary conviction to a fine not exceeding five pounds.

32. The registration officer shall, without fee, on the application of Duty of
any person, supply forms of claims and notices of objections. registra-
tion officer

33. The registration officer shall, on the application of any person, to supply
allow that person to inspect, and take extracts from, or on payment of forms.
the prescribed fee, supply to that person copies of, the electors lists for Supply of
any registration unit in his area and any claim or notice of objection copies of
made under these rules. claims, ob-
jections, etc.

34. Any claim or notice of objection which is under these rules to Mode of
be sent to the registration officer may be sent to him by post addressed sending
to him at his office. notices, etc.

Any notice which is required to be sent by the registration officer under
these rules to any person shall be sufficiently sent if sent by post to
the address of that person as given by him for the purpose, or as appear-
ing on the lists, or if there is no such address, to his last known place of
abode.

35. The registration officer may require any householder or any person Information
owning or occupying any land or premises within his area, or the agent from house-
or factor of such person, to give, in the prescribed form, any information holders.
in his possession which the registration officer may require for the purpose
of his duties as registration officer; and if any person fails to give the
required information, or gives false information, he shall be liable, on
summary conviction, to a fine not exceeding twenty pounds. Any notice
requiring information under this rule may be sent by post.

Schedule 1. 36. *The registration officer shall, subject to such directions as the Local Government Board may give, have access to the national register compiled under the National Registration Act, 1915.*

Access to
national
register.

Repealed, S. R. L. A. 1927 (18 Halsbury's Statutes 1183).

Declaration
as to age and
nationality.

37. The registration officer, before registering any person as an elector, may, if he thinks it necessary—

(a) require that person either to produce a certificate of birth or, if that is not practicable or convenient, to make a statutory declaration that such person has attained the required age, and

(b) require that person to produce a certificate of naturalisation or to make a statutory declaration that he is a British subject.

Where a declaration is so required, any fee payable in connection therewith shall be paid by the registration officer as part of his registration expenses, and the declaration shall be exempt from stamp duty.

The registration officer shall during business hours allow any person to inspect and take a copy of any such declaration.

Power to
obtain a cer-
tificate of
birth at re-
duced fee.

38. Where for the purpose of the provisions of this Act any person requires a certificate of birth, that person shall on presenting a written requisition in the prescribed form and containing the prescribed particulars, and on payment of a fee of sixpence, be entitled to obtain a certified copy of any entry of the birth of that person in the birth register under the hand of the registrar or the superintendent registrar having the custody thereof, and forms of requisition for the purpose shall on application be supplied without charge by every registrar of births and deaths and by every superintendent registrar.

Hearing of
claims and
objections.

39. On the consideration of any claim or objection or other matter by the registration officer, any person appearing to the registration officer to be interested may appear and be heard either in person or by any other person, other than counsel, on his behalf.

Power to
require
evidence
on oath.

40. The registration officer may at the request of any person interested, or if he thinks fit without such request, on the consideration of any claim or objection or other matter require that the evidence tendered by any person should be given on oath and may administer an oath for the purpose.

Provisions as
to misnomer
or inaccurate
description.

41. No misnomer or inaccurate description of any person or place on any list or on the register or in any notice shall prejudice the operation of this Act or these rules as respects that person or place, provided that the person or place is so designated as to be commonly understood.

Reckoning
of time.

42. In reckoning time for the purpose of these rules, Sunday, Christmas Day, Good Friday, and any bank holiday or day set apart as a public holiday, or day of public fast, or public thanksgiving shall be excluded; and where anything is required by these rules to be done on any day falls to be done on any such day, that thing may be done on the next day not being one of any such days.

* * * * *

SIXTH SCHEDULE.

Schedule 6.
Section 2.

ADAPTATION OF ACTS.

Section 42.

* * * * *

2. A reference to local government electors registered under this Act shall, so far as local government elections and the right to vote at any such elections are concerned, be substituted for any reference in any other Act to local government electors, county electors, burgesses, parochial electors, or other persons entitled to vote at a local government election, by whatever name called, and local government electors so registered shall for all purposes, whether statutory or not, be in the same position as any such local government electors, county electors, burgesses, parochial electors, or persons.

3. A reference to the register kept in pursuance of this Act shall, so far as it relates to parliamentary electors, be substituted for any reference in any Act to the parliamentary register of electors or to the parliamentary register or to the register of parliamentary electors or to the register of persons entitled to vote at a parliamentary election, by whatever name called, and, so far as it relates to the local government register, shall be substituted for the local government register of electors, the burgess roll, the county register, the register of parochial electors, and for the register of persons entitled to vote at a local government election, by whatever name called.

4. The registration officer shall be substituted for the overseers in sections eleven and twelve of the Parliamentary and Municipal Registration Act, 1878, and in any other enactment dealing with the duties of the overseers in connection with the registration of electors; and in sections thirty-nine, sixty-eight and sixty-nine of the Corrupt and Illegal Practices Prevention Act, 1883, "registration officer" means the registration officer under this Act.

5. Subsection (4) of section forty of the Local Government Act, 1888, shall have effect as if the words "for the time being" were substituted for the words "at the passing of this Act"; and, in order to meet any difficulty (consequent on the change of boundaries under this provision) in filling casual vacancies by election in the London County Council, any such casual vacancy shall, until the first election of the whole number of councillors which takes place after the passing of this Act, be filled by means of the choice by the Council of a person to fill the vacancy, and the councillor so chosen shall hold office in such manner and in all respects as if he had been elected to fill the vacancy.

6. Sections eleven and thirteen and (so far as necessary) section twelve of the Parliamentary and Municipal Registration Act, 1878, shall be adapted so as to be applicable to parishes situated in any constituency or in any local government area, and for that purpose "constituency" shall be substituted in those sections for "parliamentary borough," "local government area" for "municipal borough," and "registered as a local government elector" for "enrolled as a burgess."

7. The Local Government Board may, by order, make such further adaptations in the provisions of any Act (including any local Act and any Act to confirm a Provisional Order and any scheme under the

Schedule 6. Municipal Corporations Act, 1882, as amended by any subsequent Act) as may seem to them necessary to make those provisions conform with the provisions of this Act; and any order so made shall operate as if enacted in this Act.

* * * * *

Section 47,

EIGHTH SCHEDULE (a).

ENACTMENTS REPEALED.

<i>Session and Chapter.</i>	<i>Title or Short Title.</i>	<i>Extent of Repeal.</i>
* * 13 & 14 Vict. c. 57.	* * <i>The Vestries Act, 1850.</i>	* * <i>Section seven from "to give the notices for claims" to "for revising them, and," and the words "burgess lists and the."</i>
* * 30 & 31 Vict. c. 102.	* * <i>The Representation of the People Act, 1867.</i>	* * <i>The whole Act (except sections one, two, seven, thirty-seven, forty-nine to fifty-two, fifty-seven, fifty-nine, and sixty-one, and Schedule H.); section fifty-nine from "and in construing" to the end of the section.</i>
* * 32 & 33 Vict. c. 41.	* * <i>The Poor Rate Assessment and Collection Act, 1869.</i>	* * <i>Section seven so far as it relates to franchise and any disqualification which depends on franchise; section ten, and section nineteen so far as it relates to franchise and any disqualification which depends on franchise.</i>
* * 35 & 36 Vict. c. 33.	* * <i>The Ballot Act, 1872.</i>	* * <i>Section five; section eight from "all expenses" to "by law payable," and (except as respects Scotland and Ireland) from "where the sheriff" to the end of the section; subsection (5) of section sixteen, subsection (4) of section seventeen, sections eighteen and nineteen, section twenty-five from "or where" to "is proved on such trial to have voted at such election" and from "or so retained" to end of the section; section thirty-three from "and shall continue in force" to the end of the section; rules 3 and 58 in the First Schedule.</i>
* * 39 & 40 Vict. c. 61.	* * <i>The Divided Parishes and Poor Law Amendment Act, 1876.</i>	* * <i>Section fourteen.</i>
* * 41 & 42 Vict. c. 26.	* * <i>The Parliamentary and Municipal Registration Act, 1878.</i>	* * <i>The whole Act so far as unrepealed (except sections one, two, eleven, twelve, thirteen and fourteen).</i>
* * 42 & 43 Vict. c. 10.	* * <i>The Assessed Rates Act, 1879.</i>	* * <i>The whole Act as far as it relates to franchise and any disqualification which depends on franchise.</i>
* * 44 & 45 Vict. c. 68.	* * <i>The Supreme Court of Judicature Act, 1881.</i>	* * <i>Section fourteen as far as respects appeals in registration matters.</i>

Schedule 8.

<i>Session and Chapter.</i>	<i>Title or Short Title.</i>	<i>Extent of Repeal.</i>
45 & 46 Vict. c. 50.	<i>The Municipal Corporations Act, 1882.</i>	Section nine; in subsection (2) of section eleven the words from "or (b) Being entitled" to "to be made," and the words "In either of those cases"; sections thirty-two and thirty-three; subsection (3) of section forty-two; section forty-four; paragraphs (1) to (7) of section forty-five; sections forty-six to forty-nine; in subsection (2) of section fifty-one the words "or vote in more than one ward"; sections sixty-three, seventy-one, and seventy-six, subsections (1) and (3) of section two hundred and nine, section two hundred and forty-four, Part I. of the Third Schedule, in rule four of Part II. of the Third Schedule, the words "or entered in the separate non-resident list required by this Act to be made," Part IV. of the Third Schedule, rule one of Part II. of the Fifth Schedule so far as respects expenses incurred in relation to the enrolment of burgesses, and Forms C to G in Part II. of the Eighth Schedule.
* * * * *	* * * * *	* * * * *
46 & 47 Vict. c. 51.	<i>The Corrupt and Illegal Practices Prevention Act, 1883.</i>	Subsection (2) of section thirty-two; paragraph (c) of subsection (1) of section thirty-three; subsection (1) of section thirty-five from "and may charge" to the end of the subsection; subsection (3) of section thirty-nine; section forty-seven; the definitions of "registration officer" in sections sixty-four and sixty-eight; subsection (12) of section sixty-eight; subsection (4) of section sixty-nine from "in the manner" to the end of the subsection; subsection (9) of section sixty-nine; paragraph (7) of Part I. of the First Schedule; paragraph (1) of Part II. of the First Schedule; in the "Form of Return of Election Expenses" in Part I. of the Second Schedule the first paragraph under the heading "Expenditure."
* * * * *	* * * * *	* * * * *
47 & 48 Vict. c. 70.	<i>The Municipal Elections (Corrupt and Illegal Practices) Act, 1884.</i>	Subsection (3) of section thirteen.
* * * * *	* * * * *	* * * * *
48 & 49 Vict. c. 9.	<i>The Municipal Voters Relief Act, 1885.</i>	The whole Act so far as unrepealed.
48 & 49 Vict. c. 15.	<i>The Registration Act, 1885.</i>	The whole Act so far as unrepealed (except sections sixteen, nineteen, and twenty); the definitions of "ownership voter," "fifty pounds rental voter," and "occupation voter" in section nineteen.
* * * * *	* * * * *	* * * * *

Schedule 8.

<i>Session and Chapter.</i>	<i>Title or Short Title.</i>	<i>Extent of Repeal.</i>
48 & 49 Vict. c. 46.	<i>The Medical Relief Disqualification Removal Act, 1885.</i>	<i>The whole Act so far as unrepealed.</i>
* * *	* * *	* * *
51 & 52 Vict. c. 10.	<i>The County Electors Act, 1888.</i>	<i>The whole Act so far as unrepealed.</i>
51 & 52 Vict. c. 41.	<i>The Local Government Act, 1888.</i>	<i>Paragraph (b) of subsection (2) of section two from "or is registered" to the end of the paragraph; paragraph (xii) of section three; subsection (6) of section thirty-four; proviso twelve in section seventy-five; sections seventy-six and seventy-seven; in paragraph (6), of section eighty-three the words "registration of parliamentary voters or to the," the words "or to any registration matters," and the word "registration" where it lastly occurs; in subsection (2) of section ninety-two the word "occupation" and the words "of making out and revising the list of voters, of conducting any parliamentary election"; subsection (3) of section ninety-two.</i>
* * *	* * *	* * *
54 & 55 Vict. c. 11.	<i>The Electoral Disabilities Removal Act, 1891.</i>	<i>The whole Act.</i>
54 & 55 Vict. c. 18.	<i>The Registration of Electors Act, 1891.</i>	<i>The whole Act.</i>
* * *	* * *	* * *
54 & 55 Vict. c. 68.	<i>The County Councils (Elections) Act, 1891.</i>	<i>Section two.</i>
56 & 57 Vict. c. 73.	<i>The Local Government Act, 1894.</i>	<i>Sections forty-three and forty-four.</i>
* * *	* * *	* * *
4 & 5 Geo. 5, c. 25.	<i>The Electoral Disabilities (Naval and Military Service) Removal Act, 1914.</i>	<i>The whole Act.</i>
* * *	* * *	* * *

(a) Repealed, S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

THE TERMINATION OF THE PRESENT WAR (DEFINITION) ACT, 1918.

(8 & 9 GEO. 5, c. 59.)

An Act to make provision for determining the date of the termination of the present war, and for purposes connected therewith.

[21st November, 1918.]

Power to determine date of termination of the present war.

1.—(1) His Majesty in Council may declare what date is to be treated as the date of the termination of the present war, and the present war shall be treated as having continued to, and as having ended on that date for the purposes of any provision in any Act of Parliament, Order in Council, or Proclamation, and, except where the context otherwise requires, of any provision in any contract, deed, or other instrument referring, expressly or impliedly, and in whatever form of words, to the present war or the present hostilities:

Provided that in the case of any such Act conferring powers on any Government Department, or any officer of any Government Department, exercisable during the continuance of the present war, if it appears to His Majesty that it is expedient that the powers shall cease before the date so fixed as aforesaid, His Majesty in Council may fix some earlier date for the termination of those powers (a).

(2) The date so declared shall be as nearly as may be the date of the exchange or deposit of ratifications of the treaty or treaties of peace :

Provided that, notwithstanding anything in this provision, the date declared as aforesaid shall be conclusive for all purposes of this Act (b).

(3) His Majesty in Council may also similarly declare what date is to be treated as the date of the termination of war between His Majesty and any particular State (c).

(a) Words in italics were repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(b) By an Order in Council dated August 10th, 1921 (S. R. & O., 1921, No. 1276), August 31st, 1921, was declared to be the date of the termination of the war generally. See, however, the War Emergency Laws (Continuance) Act, 1920 (18 Halsbury's Statutes 1177), which provides for the continuance of various Acts, etc., whose duration depended on that of the war.

(c) Orders have been made under this section in relation to Germany (S. R. & O., 1920, No. 264), Austria (S. R. & O., 1920, No. 1347), Bulgaria (S. R. & O., 1920, No. 1612), Hungary (S. R. & O., 1921, No. 1284), Turkey (S. R. & O., 1924, No. 819).

2. This Act may be cited as the Termination of the Present War Short title. (Definition) Act, 1918.

MINISTRY OF HEALTH ACT, 1919.

(9 & 10 Geo. 5, c. 21.)

An Act to establish a Ministry of Health to exercise in England and Wales powers with respect to Health and Local Government, and confer upon the Chief Secretary certain powers with respect to Health in Ireland, and for purposes connected therewith. [3rd June, 1919.]

1. For the purpose of promoting the health of the people throughout England and Wales, and for the purpose of the exercise of the powers transferred or conferred by this Act, it shall be lawful for His Majesty to appoint a Minister of Health (hereinafter called the "Minister"), who shall hold office during His Majesty's pleasure (a).

(a) See sub-s. (1) of s. 11, *post*, p. 5193, which enacted that this Act should come into operation on such day or days as might be appointed by Order in Council and that different days might be appointed for different purposes and provisions of the Act. By Order in Council of June 25th, 1919, that day was fixed as the appointed day for s. 1.

2. It shall be the duty of the Minister, in the exercise and performance of any powers and duties transferred to or conferred upon him by or in pursuance of this Act, to take all such steps as may be desirable to secure the preparation, effective carrying out and co-ordination of measures conducive to the health of the people, including measures for the prevention and cure of diseases, the avoidance of fraud in connection with alleged remedies therefor, the treatment of physical and mental defects, the treatment and care of the blind, the initiation and direction of research, the collection, preparation, publication, and dissemination of information and statistics relating thereto, and the training of persons for health services (a).

(a) An Order in Council of June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this section.

3.—(1) There shall be transferred to the Minister—

(a) all the powers and duties of the Local Government Board (a);

(b) all the powers and duties of the Insurance Commissioners and the Welsh Insurance Commissioners (b);

(c) all the powers of the Board of Education with respect to attending

Transfer of powers and duties to and from Minister.

Establishment of Minister.

General powers and duties of Minister in relation to health.

Section 3.

to the health of expectant mothers and nursing mothers and of children who have not attained the age of five years and are not in attendance at schools recognised by the Board of Education (c);

(d) . . . (d);

2 Edw. 7, c. 17.
8 & 9 Geo. 5,
c. 43.

(e) all the powers of the Privy Council and of the Lord President of the Council under the Midwives Acts, 1902 and 1918 (e);

8 Edw. 7, c. 67.

(f) such powers of supervising the administration of Part I. of the Children Act, 1908 (which relates to infant life protection), as have heretofore been exercised by the Secretary of State (f):

Provided that—

1 & 2 Geo. 5,
c. 55.

(i) the power conferred on the Insurance Commissioners by the proviso to subsection (2) of section sixteen of the National Insurance Act, 1911, of retaining and applying for the purposes of research such sums as are therein mentioned shall not be transferred to the Minister, but the duties heretofore performed by the Medical Research Committee shall after the date of the commencement of this Act be carried on by or under the direction of a Committee of the Privy Council appointed by His Majesty for that purpose, and any property held for the purposes of the former Committee shall after that date be transferred to and vested in such persons as the body by whom such duties as aforesaid are carried on may appoint, and be held by them for the purposes of that body (g); and

(ii) . . . (h).

(2) It shall be lawful for His Majesty from time to time by Order in Council to transfer to the Minister (i)—

(a) *all or any of the powers and duties of the Minister of Pensions with respect to the health of disabled officers and men after they have left the service; (k)*

(b) all or any of the powers and duties of the Secretary of State under the enactments relating to lunacy and mental deficiency (l);

(c) any other powers and duties in England and Wales of any Government department which appear to His Majesty to relate to matters affecting or incidental to the health of the people.

(3) It shall be lawful for His Majesty from time to time by Order in Council to transfer from the Minister to any other Government department any of the powers and duties of the Minister, whether relating to the relief of the poor or otherwise, which appear to His Majesty not to relate to matters affecting or incidental to the health of the people (m).

And it is hereby declared that it is the intention of this Act that, in the event of provision being made by Act of Parliament passed in the present or in any future session for the revision of the law relating to the relief of the poor and the distribution amongst other authorities of the powers exercisable by boards of guardians, there shall be transferred from the Minister to other Government departments such of the powers and duties under the enactments relating to the relief of the poor then vested in the Minister (not being powers or duties relating or incidental to the health of the people) as appear to His Majesty to be such as could be more conveniently exercised and performed by such other departments.

(4) His Majesty may by Order in Council make such incidental, consequential, and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to any transfer of powers or duties by or under this section, including provisions for the transfer of any property, rights, and liabilities held, enjoyed, or incurred by any Government department in connection with any powers or duties transferred, and may make such

adaptations in the enactments relating to such powers or duties as may be necessary to make exercisable by the Minister and his officers or by such other Government department and their officers, as the case may be, the powers and duties so transferred (n).

(5) In connection with the transfer of powers and duties to or from the Minister by or under this Act, the provisions set out in the First Schedule to this Act shall have effect (n).

(a) An Order in Council of June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this part of this sub-section. Except so far as related to powers and duties conferred or imposed upon the L. G. B. by any Act of Parliament passed, or Provisional Order confirmed or other instrument made, on or after July 1st, 1919, but during the then present session of Parliament, in respect of which powers and duties the appointed day was declared to be the day on which such Act, order or instrument came into operation. The L. G. B. was constituted by Local Government Board Act, 1871, the unrepealed sections of which are set out, *ante*, p. 4319. By the Ministry of Transport Act, 1919, *post*, p. 5195, and Orders in Council made thereunder, certain powers of the Minister of Health in relation to highway and other matters were transferred to the Minister of Transport.

(b) An Order in Council of June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this part of this sub-section. The Insurance Commissioners and the Welsh Insurance Commissioners were constituted by the National Insurance Act, 1911 (20 Halsbury's Statutes 465).

(c) An Order in Council of September 22nd, 1919, fixed October 1st, 1919, for the coming into operation of this part of this sub-section.

(d) This sub-section is repealed by s. 172 and Sched. VII. of the Education Act, 1921 (7 Halsbury's Statutes 215, 225). It provided for the transfer to the Minister of the powers and duties of the Board of Education with respect to medical inspection and treatment of school children. See now Part VII. of the Education Act, 1921 (*op. cit.* 174).

(e) An Order in Council of June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this part of this sub-section. See the Acts of 1902, 1918 and 1926, *ante*, pp. 1535, 1546, 1552.

(f) An Order in Council of September 22nd, 1919, fixed October 1st, 1919, for the coming into operation of this part of this sub-section.

(g) An Order in Council dated February 9th, 1920, fixed April 1st, 1920, for the coming into operation of this proviso.

(h) This proviso was repealed by s. 133 and Sched. VII. of the National Health Insurance Act, 1924 (20 Halsbury's Statutes 563, 571).

(i) An Order in Council dated June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this and the three following sub-sections. See the Ministry of Health (Factories and Workshops Transfer of Powers) Order, 1921, and the Ministry of Health (Transfer of Powers as to Water Undertakings) Order, 1920.

(k) This paragraph was repealed by the S. L. R. A., 1927 (18 Halsbury's Statutes 1183), no Order in Council having been made under the provision.

(l) An Order in Council transferred certain of these powers to the Minister as from May 17th, 1920.

(m) See note (i), *supra*. An Order in Council dated May 17th, 1920, transferred from the Ministry of Health to the Board of Education certain powers and duties in relation to public libraries, museums, and gymnasiums. See also the Ministry of Health (Registration and Elections, Transfer of Power) Order, 1921, the Ministry of Health (Transfer of Powers as to Gas Undertakings) Order, 1920.

(n) See note (g), *supra*.

4.—(1) It shall be lawful for His Majesty by Order in Council to establish consultative councils in England and Wales for giving, in accordance with the provisions of the Order, advice and assistance to the Minister in connection with such matters affecting or incidental to the health of the people as may be referred to in such Order (a)

(2) Every such council shall include women as well as men, and shall consist of persons having practical experience of the matters referred to the council.

(a) An Order in Council of June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this and the six following sections. Consultative Councils were set up on a number of subjects by Order in Council dated August 18th, 1919. See "Local Government, 1919" (published by Butterworth & Co.), p. 395. This Order was amended by an Order dated June 26th, 1923 (see "Local Government, 1923," p. 320).

5. The Minister shall, subject to the provisions of this Act, appoint such officers as he may think fit to constitute a Board of Health in Wales through

Section 3.

Provisions to Wales.

Section 5. whom he may exercise and perform in Wales in such manner as he may think fit any of his powers and duties ; the Board and any officer who is a member thereof shall act under the directions, and comply with the instructions, of the Minister (a).

(a) See note (a) to s. 4, *ante*, p. 5191. The Minister of Health has from time to time transferred to the Welsh Board of Health, with offices at Cardiff, a number of his functions so far as exerciseable in Wales and Monmouthshire. Details will be found in circulars dated 30th September, 1920 (*ante*, p. 3924) ; 20th April, 1941 (*ante*, p. 3425) ; and 26th April, 1940 (*ante*, p. 3427).

Staff and
remuneration.

6(a).—(1) The Minister may appoint one parliamentary secretary and such secretaries, officers, and servants as the Minister may, subject to the consent of the Treasury as to number, determine, and in the making of such appointments shall give equal consideration to the suitability of persons of both sexes.

(2) There shall be paid out of moneys provided by Parliament to the Minister an annual salary not exceeding five thousand pounds, and to the secretaries, officers, and servants of the Ministry such salaries or remuneration as the Treasury may from time to time determine (a).

(3) The expenses of the Ministry, including payments to members of consultative councils and committees thereof, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament :

Provided that no payments shall be made to members of consultative councils and committees thereof other than the repayment of travelling expenses and payment of subsistence allowance and reasonable compensation for loss of remunerative time.

(4) There shall be transferred and attached to the Ministry the persons employed under the Local Government Board, the Insurance Commissioners and the Welsh Insurance Commissioners, and such of the persons employed under any other Government department in or about the execution of the powers and duties transferred by or under this Act to the Minister, as the Minister and Government department, with the sanction of the Treasury, may determine.

(5) The Minister may from time to time distribute the business of the Ministry amongst the several persons transferred or attached thereto in pursuance of this Act in such manner as he may think right, and those persons shall perform such duties in relation to that business as may be directed by the Minister :

Provided that such persons shall be in no worse position as respects the tenure of office, salary or superannuation allowances than they would have been if this Act had not been passed (b).

(a) For the salary of the Parliamentary Secretary now see s. 1 of the Ministers of the Crown Act, 1937 (30 Halsbury's Statutes 117).

(b) See note (a) to s. 4, *ante*, p. 5191.

Seal, style, and
acts of Minister.

7(a).—(1) The Minister may sue and be sued by the name of the Minister of Health, and may for all purposes be described by that name (b).

(2) The Minister shall have an official seal, which shall be officially and judicially noticed, and shall be authenticated by the signature of the Minister, or of a secretary, or any person authorised by the Minister to act in that behalf (c).

(3) For the purpose of acquiring and holding land, the Minister for the time being shall be a corporation sole by the name of the Minister of Health, and all land vested in the Minister shall be held in trust for His Majesty for the purposes of the Ministry of Health.

(4) Upon and by virtue of the appointment of any person to be Minister, the benefit of all deeds, contracts, bonds, securities, or things in action vested

in his predecessor at the time of his predecessor ceasing to hold office shall be transferred to and vested in and enure for the benefit of the person so appointed, in the same manner as if he had been contracted with instead of his predecessor, and if his name had been inserted in all such deeds, contracts, bonds, or securities instead of the name of his predecessor. Section 7.

(5) Subsections (2) to (4) of section eleven and section twelve of the New Ministries and Secretaries Act, 1916, shall apply to the Minister and the Ministry of Health, and to the office of the Minister of Health and in like manner as they apply to the Ministers and Ministries mentioned in those sections. 6 & 7 Geo. 5, c. 68.

(a) See note (a) to s. 4, *ante*, p. 5191.

(b) This sub-section does not have the effect of enabling an action to be brought against the Minister of Health for breach of contract; but the proper remedy is still against the Crown by petition of right (*Gilleghen v. Minister of Health*, [1932] 1 Ch. 86; Digest Supp.).

(c) As to the cases in which the signature of a secretary or assistant secretary may be used in place of the seal, see L. G. (Emergency Provisions) Act, 1916, s. 12, *ante*, p. 5150.

8(a).—(1) Any Order in Council made under this Act may be revoked or varied by a subsequent Order. Provisions as to Orders in Council.

(2) Before any Order in Council under this Act (*other than an Order appointing a day for the commencement of this Act or any provision thereof*) (b) is made, notice of the proposal to make the Order and of the place where copies of a draft of the Order can be obtained shall be published in the London Gazette, and in such other manner as the Minister thinks best adapted for insuring publicity, and a draft of the Order shall be laid before each House of Parliament for not less than thirty days on which such House is sitting.

(3) In the case of a draft of an Order providing for any transfer of powers or duties to or from the Minister under subsections (2) and (3) of section three of this Act, or for the establishment of any consultative council under section four thereof, the Order shall not be made until both Houses by resolution have approved the draft, nor, if any modifications are agreed to by both Houses, otherwise than as so modified, and in the case of a draft of any other Order which is required to be laid as aforesaid, if either House before the expiration of such thirty days presents an Address to His Majesty against the draft, or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft Order.

(a) See note (a) to s. 4, *ante*, p. 5191.

(b) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

9(a).

(a) See note (a) to s. 4, *ante*, p. 5191. Sub-s. (1) deals only with Ireland and is omitted. Sub-s. (2) was repealed by s. 133 and Sched. VII. of the National Health Insurance Act, 1924 (20 Halsbury's Statutes 563, 571).

Consequential modifications of Insurance Acts.

10.—[Application to Ireland.]

11(a).—(1) This Act may be cited as the Ministry of Health Act, 1919, and shall come into operation upon such day or days as may be appointed by Order in Council, and different days may be appointed for different purposes and provisions of this Act: Short title, commencement, and repeal, and interpretation.

Provided that the latest day for the transfer of powers to the Minister under subsection (1) of section three of this Act shall not be later than one year after the passing of this Act:

Provided that the day appointed for the transfer of the powers of the Minister of Pensions shall not be earlier than one year or later than three years after the termination of the present war.

Section 11. (2) *The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule (b).*

(3) For the purposes of this Act, Monmouthshire shall be deemed to form part of Wales (c).

(4) The expression "Government department" includes the Insurance Commissioners, the Welsh Insurance Commissioners, and any other public department and any Minister of the Crown acting as the head of a Government department (c).

(a) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(b) An Order in Council of February 9th, 1920, fixed April 1st, 1920, for the coming into operation of so much of this sub-section and of the Second Schedule as repealed para. (b) of and the proviso to sub-s. (2) of s. 16 of the National Insurance Act, 1911.

(c) An Order in Council of June 25th, 1919, fixed July 1st, 1919, for the coming into operation of this and the next sub-section.

SCHEDULES.

FIRST SCHEDULE.

Section 3.

TRANSITORY PROVISIONS.

1. In the construction and for the purposes of any Act of Parliament, judgment, decree, order, award, deed, contract, regulation, byelaw, or other document passed or made before the transfer to or from the Minister from or to any other Government department of any powers or duties by or under this Act, but so far only as may be necessary for the purpose of such transfer, the name of the Minister or of the other Government department shall be substituted for the name of the other Government department or of the Minister, as the case may require.

2. Where anything has been commenced by or under the authority of any other Government department or the Minister before the transfer to the Minister or another Government department of any powers or duties by or under this Act, and such thing is in relation to the powers or duties so transferred, such thing may be carried on and completed by or under the authority of the Minister or the other Government department, as the case may be.

3. Where at the time of the transfer of any powers or duties by or under this Act any legal proceeding is pending to which any Government department or the Minister is a party, and such proceeding has reference to the powers and duties transferred by or under this Act, the Minister or the other Government department shall be substituted in such proceeding for the other Government department or the Minister, as the case may be, and such proceeding shall not abate by reason of the substitution.

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SECOND SCHEDULE (a).

REPEALS.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
34 & 35 Vict. c. 70.	<i>The Local Government Board Act, 1871.</i>	<i>Sections three, four, five and six.</i>
1 & 2 Geo. 5, c. 55.	<i>The National Insurance Act, 1911.</i>	<p><i>Paragraph (b) of and the proviso to sub-section (2) of section sixteen, sub-sections (1), (2), (3) and (4) of section fifty-seven, and section fifty-eight, except so far as those sections are applied to the Scottish Insurance Commissioners and the Irish Insurance Commissioners.</i></p> <p><i>In paragraph (1) of section eighty-one the words "shall be appointed by the Treasury, and"</i></p> <p><i>Subsection (1) of section eighty-two.</i></p> <p><i>In subsection (1) of section eighty-three, the words "as soon as may be after the passing of this Act, in accordance with regulations made by the Treasury," and the words from "of the several bodies of Commissioners" to the end of the subsection.</i></p>

(a) This schedule was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

MINISTRY OF TRANSPORT ACT, 1919.

(9 & 10 GEO. 5, c. 50.)

An Act to establish a Ministry of Transport and for purposes connected therewith. [15th August, 1919.]

1. For the purpose of improving the means of, and the facilities for, locomotion and transport, it shall be lawful for His Majesty to appoint a Minister of Transport (hereinafter referred to as the Minister), who shall hold office during His Majesty's pleasure.

2.—(1) It shall be the duty of the Minister in the exercise and performance of any powers and duties transferred to, or conferred or imposed upon, him by or in pursuance of this Act, to take steps to carry out the purposes aforesaid, and there shall, as from such date or dates as His Majesty in Council may by Order determine, be transferred to the Minister all powers and duties of any Government Department in relation to—

- (a) railways;
- (b) light railways;
- (c) tramways;
- (d) canals, waterways, and inland navigations;
- (e) roads, bridges and ferries, and vehicles and traffic thereon;
- (f) harbours, docks and piers;

including any powers and duties of any Government Department in relation to any railway, light railway, tramway, canal, inland navigation, harbour, dock, pier, or other undertaking concerned with any of the matters aforesaid, and any powers of any Government Department with respect to the appointment of members or the procedure of any commissioners, conservancy board or other body having jurisdiction with respect to any such matters as aforesaid, and any powers of any Government Department with respect to the making, confirming, issuing, granting, or giving (as the case may be) of byelaws, regulations, orders, licences, approvals, or consents relating to any of the matters hereinbefore mentioned:

Provided that—

- (i) His Majesty in Council may by Order except from such transfer any particular powers or duties, or provide for the exercise or performance of any power or duty so excepted by the Minister concurrently or in consultation with or at the instance of the Government Department concerned, or by the Government Department concerned concurrently or in consultation with the Minister, or provide for the retransfer to any such Department of any powers and duties transferred to the Minister by this section; and
- (ii) Nothing in this section shall transfer to the Minister any powers or duties of the Admiralty exerciseable in or in relation to ports declared under the Dockyard Port Regulation Act, 1865, to be dockyard ports, but His Majesty in Council may by Order transfer to the Admiralty, instead of to the Minister, any of the powers of the Board of Trade with respect to dockyard ports, or with respect to the appointment of members of any commissioners, conservancy board, or other body having jurisdiction in the whole or any part of a dockyard port; and
- (iii) Nothing in this section shall transfer to the Minister the powers of the Board of Trade with respect to the appointment of members or the procedure of the Railway and Canal Commission,

28 & 29 Vict.
c. 125.

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but His Majesty in Council may by Order transfer those powers to a Secretary of State instead of to the Minister (a).

(2) His Majesty in Council may by Order make such incidental, consequential and supplemental provisions as may be necessary or expedient for the purpose of giving full effect to any transfer of powers or duties by or under this section, including provisions for the transfer of any property, rights and liabilities held, enjoyed, or incurred by any Government Department in connexion with any powers or duties transferred, and may make such adaptations in the enactments relating to such powers or duties as may be necessary to make exercisable by the Minister and his officers or by the Admiralty and their officers, as the case may be, the powers and duties so transferred: Provided always that nothing herein contained shall enable the powers so transferred to be increased.

(2) In connexion with the transfer of powers and duties to the Minister, Admiralty, or Secretary of State, by or under this Act, the provisions set out in the First Schedule to this Act shall have effect.

(4) There shall be attached to the Ministry a separate department charged with dealing in the ordinary course of departmental business with road construction, improvement, maintenance, and development.

(a) With certain exceptions, the powers of the Board of Trade in relation to (a) railways (b) light railways; (c) tramways; (d) canals, waterways, inland navigations; (e) roads, bridges, ferries, vehicles and traffic thereon; and (f) harbours, docks, and piers passed to the Minister of Transport on September 23rd, 1919, by virtue of an Order in Council dated September 22nd, 1919. The exceptions were as follows: (1) All powers and duties under the Lands Clauses Acts; s. 36 of the Railway Companies Act, 1867 (14 Halsbury's Statutes 175); ss. 3 (14 Halsbury's Statutes 220), 7, 20, 25, and 31 of the Railway and Canal Traffic Act, 1888, *ante*, pp. 4705, 4708, 4711, 4715; and ss. 5 and 13 of the Light Railways Act, 1896 (14 Halsbury's Statutes 254, 257); (2) powers and duties so far as they relate to navigation under the Preliminary Inquiries Act, 1851 (18 Halsbury's Statutes 76); Harbours Transfer Act, 1862 (*op. cit.*, 119); ss. 7 to 11 of the General Pier and Harbour Act, 1861, Amendment Act, 1862 (*op. cit.*, 114, 115), and any local, special, or private Act; and (3) powers and duties under s. 8 (20 Halsbury's Statutes 350) (in regard to appointment of commissioners after consultation as therein mentioned) and sub-ss. (1) and (2) of s. 27 of the Port of London Act, 1908.

Further, with certain exceptions, the powers of the Minister of Health in relation to the matters above mentioned passed to the Minister of Transport on September 23rd, 1919, by virtue of an Order in Council dated September 22nd, 1919. The exceptions were: (1) the powers and duties of the Minister of Health in regard to the matters aforesaid of giving sanction to the borrowing of money by local authorities; (2) the powers and duties of the Minister of Health under the Housing Acts, 1890 to 1919, *ante*, p. 1809; and (3) the powers and duties of the Minister of Health with respect to the confirmation of byelaws made by local authorities other than byelaws made under s. 26 of the Highways and Locomotives (Amendment) Act, 1878 (9 Halsbury's Statutes 181), and byelaws made under s. 6 of the Locomotives Act, 1898. There is, however, a proviso in the Order in Council that in the exercise of the powers so excepted so far as they relate to roads, bridges, vehicles, and traffic thereon the Minister of Health shall act in consultation with the Minister of Transport.

By a third Order in Council of the same date the powers and duties of the Road Board in relation to the matters aforesaid passed to the Minister of Transport on September 23rd, 1919. Under s. 39 (1) of the Electricity (Supply) Act, 1919, *post*, p. 5265, and the Ministry of Transport (Electricity Supply) Order, 1920, the powers and duties of the Board of Trade under the Electric Lighting Acts and local Acts relating to the supply of electricity passed to the Minister of Transport on January 23rd, 1920.

3. (a)—(1) With a view to affording time for the consideration and formulation of the policy to be pursued as to the future position of undertakings to which this section applies, the following provisions shall, unless Parliament otherwise determines, have effect for a period of two years after the passing of this Act, or where as respects any particular provision a longer period is expressly provided, for such longer period:—

(a) Where at the passing of this Act possession has been taken of any railroad undertaking or part thereof in pursuance of section sixteen of the Regulation of the Forces Act, 1871, or otherwise, possession

Power to
control
temporarily
railways, etc.

thereof shall be retained without any renewal of the warrant granted by the Secretary of State in pursuance of that section, upon the same terms as to compensation as those heretofore in force, and the Minister may exercise over all such undertakings all such powers as have hitherto been exercised by the Board of Trade under the said Act or with the consent of the owners of the undertakings or otherwise, and such other powers as may be conferred by this section or agreed to by the railway companies concerned :

- (b) The Minister may, after giving not less than one month's notice in writing, take possession, in the name or on behalf of His Majesty, of the whole or any part of any other statutory railway undertaking or of any light railway or tramway undertaking (other than a tramway or a light railway used as a tramway belonging to a local authority), or of any canal or inland navigation undertaking, and, subject as hereinafter, mentioned, of any harbour, dock or pier undertaking, or of any plant belonging to any such undertaking as aforesaid or used thereon (exclusive of privately owned railway wagons), and of any barges, tugs, and other craft owned or held by the undertaking of which possession has been taken : Provided that such notice as aforesaid shall not, in the event of the matter being referred to an advisory committee as hereinafter provided, be given until the committee has reported :

- (c) The directors and other persons concerned with the management, and officers and servants of any undertaking of the whole or part of which, or of the plant whereof, possession is retained or taken shall obey the directions of the Minister as to the user thereof, and any directions of the Minister in relation to the undertaking or part or plant thereof of which possession is retained or taken—

(i) as to the rates, fares, tolls, dues and charges to be charged ; subject, however, to the provisions hereinafter contained respecting references to the advisory committee established for advising as to directions on the matters aforesaid ;

(ii) as to the salaries, wages, and remuneration and conditions of employment of persons employed on or in connexion with the undertaking ;

(iii) as to the working or discontinuance of the working of the undertaking or any part thereof including directions as to keeping open or closing of any stations ;

(iv) for securing that the permanent way, rolling stock, plant, appliances, or equipment, whether fixed or moveable, are satisfactory in type and design ;

(v) as to the carrying out of alterations, improvements, and additions which the Minister considers necessary for the public safety or for the more efficient and economic working of the undertaking ;

(vi) for securing co-operation between undertakings and for securing the common user of facilities, rolling stock and equipment whether fixed or moveable ;

(vii) for affording running powers over their system, or any part thereof, to the owners of any other undertaking ;

(viii) for securing that manufacturing and repairing facilities and auxiliary and ancillary services shall be used, and the purchase and distribution of stores shall be conducted, in such manner as may be most conducive to economy and efficiency.

Nothing in this section shall be construed as authorising the Minister to compel the owners of any such undertaking either to

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incur capital expenditure, or to draw upon their reserve funds, for new works or capital improvements to an extent which would seriously interfere with their finances, it being the intention that the financing of the undertakings from a capital point of view shall remain as far as possible with the owners.

(d) For enabling any directions given by the Minister under the last foregoing paragraph as to alterations, and improvements and additions to be carried into effect, the Minister may, by order, authorise the owners of any undertaking to acquire any land (or easements) and to construct any works, and the order may incorporate the Lands Clauses Acts, subject to such modifications as may be specified in the order, being modifications of those Acts made or authorised to be made by the Development and Road Improvement Funds Act, 1909, or any other enactment, and may incorporate or apply any of the provisions of any enactment relating to the construction, maintenance, or working of railways, light railways, tramways, canals, harbours, docks, and piers, and any such order shall have effect as if enacted in this Act: Provided that nothing herein contained shall be deemed to empower the Minister to authorise the acquisition, otherwise than by agreement, of any land belonging to the owners of another undertaking to which this section applies, or of a local authority, or of a harbour dock or pier undertaking, but the Minister may authorise the acquisition of an easement or right of using such land for the purposes of any works the construction of which he may authorise under this section.

(e) In the case of any undertaking of which possession is retained or taken by the Minister as aforesaid any rates, fares, tolls, dues and other charges directed by the Minister shall be deemed to be reasonable, and may, notwithstanding any agreement or statutory provisions limiting the amount of such charges or increases therein, be charged in respect of any undertaking during the period for which the Minister retains possession of such undertaking, and for a further period of eighteen months after the expiration of the said period, or until fresh provision shall be made by Parliament with regard to the amount of any such rates, fares, tolls, dues, and other charges, whichever shall first happen:

(f) Notwithstanding anything contained in this Act, the rights of a consignor or consignee of goods or minerals, any trader or class of traders, or any port or harbour authority or dock company to complain to the Railway and Canal Commission under the Railway and Canal Traffic Acts 1854 to 1913 in respect of undue preference or undue disadvantage or allowances or rebates in relation to the provision of station accommodation or terminal services shall not be deemed to be affected, and it shall be no answer to any such complaint that the railway company in respect of which the complaint is made was acting under the directions of the Minister.

(2) Subject as aforesaid, any agreement made between the owners of any undertaking, of the whole or part of which possession has been retained or taken under this section, and any other person shall continue in force in like manner as if such possession had not been so retained or taken, unless the Minister considers that such agreement is contrary to the public interest, and in that case he may suspend or modify the operation of such agreement during the period of such possession and for a period not exceeding eighteen months thereafter, and any party to the agreement who suffers loss or injury by reason of such suspension or modification, and any person who, by virtue

of any special statutory provision or agreement, is entitled to the benefit of any special rate, fare, toll, due, or other charge, and whose position relatively to other persons is prejudiced by any direction of the Minister altering such special charge, shall be entitled to receive such compensation as, in default of agreement, may be determined by the Railway and Canal Commission, regard being had to any change in circumstances. Section 3.

(3) The exercise by the Minister of any of his powers under this section as respects any tramway or light railway used as a tramway which a local authority, or two or more local authorities, have power to purchase under any Act of Parliament or order having the effect of an Act of Parliament shall not affect such right of the local authority, or authorities, and upon the purchase thereof such tramway or light railway shall cease to be in the possession of the Minister.

(4) Nothing in this section shall be deemed to exempt from any local rate or assessment any undertaking to which this section applies.

(5) For the purposes of this Act, possession so taken or retained as aforesaid shall confer on the Minister such rights of control and direction as may be necessary for the exercise of his powers under this Act, but shall not confer on him any rights of ownership.

(a) The operation of this section appears to be now spent, except sub-s. (1) (c), in relation to canals (Canals (Continuance of Charging Powers) Act, 1922; Expiring Laws Continuance Act, 1928; 14, 18 Halsbury's Statutes 387, 1226).

4. (a)—[*Saving for statutory harbour, dock and pier authorities.*]

(a) This section was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183), being of temporary operation only and then spent.

5. The Minister shall have the power to require through-runings on adjoining tramways (a) belonging to different owners, whether local authorities or not, and in default of agreement between such owners to settle the terms of such through-running, after hearing the said owners, in such manner as he thinks fit. Power to grant through-runings on tramways.

(a) "Tramway" includes a trackless trolley vehicle system. See s. 80 (2), *post*, p. 5211.

6. Where in pursuance of any direction given by the Minister under this Act the owners of any undertaking shall acquire any lands or easement, or construct any works, or carry out any alteration or improvement or addition to their undertaking, the owners may, after the expiration of the period of possession, continue to hold and use such lands or easement and maintain and use such works, alteration, improvement, or addition for the purposes of their undertaking, and such land, easement, works, alteration, improvement, and addition shall for all purposes be deemed to form part of their undertaking. Power to retain lands, etc.

7.—(1) The following provisions shall apply with respect to officers or servants of any undertaking of which, or of any part or plant of which possession has been retained or taken under this Act (all of which officers and servants are in this Act hereinafter referred to as "existing officers and servants") :— Provisions as to officers and servants.

(i) Where the Minister requires the services of any existing officer or servant, that officer or servant may be transferred to the Minister—

(a) either permanently with the consent of the officer or servant; or

(b) temporarily with the consent (which shall not unreasonably be withheld) of the officer or servant, and of the owners of the undertaking;

(ii) No existing officer or servant so transferred, whether temporarily

Section 7.

- or permanently, shall without his consent be, by reason of such transfer or anything done under this Act, in any worse position in respect to the conditions of his service (including tenure of office, remuneration, gratuities, pension, superannuation, sick fund or any benefits or allowances, whether obtaining legally or by customary practice), as compared with the conditions of service obtaining with respect to him at the passing of this Act, and, if any question arises as to whether the provisions of this paragraph have been complied with, the question shall be referred to a standing arbitrator or board of arbitration appointed by the Lord Chancellor for the purposes of this section, and, if the arbitrator or board consider that those provisions have not been complied with and that the officer or servant has thereby suffered loss or injury, they shall award him such sum as they think sufficient to compensate him for such loss or injury :
- (iii) Where an existing officer or servant has been transferred either temporarily or permanently to the Minister under this section, then, so long as the Minister remains in possession of that undertaking or any part or plant thereof, that officer or servant may remain a full member of any pension or superannuation fund established in connexion with the undertaking with all the rights to which he would be entitled had he continued in the service of the owners of the undertaking, and any contributions payable under the rules of the pension or superannuation fund or by customary practice by the owners of the undertaking may be paid by the Treasury out of moneys provided by Parliament, and he shall be entitled to receive such reasonable allowances for temporary disturbance as the Minister with the consent of the Treasury may determine (including direct pecuniary loss sustained in consequence of the transfer) :
- (iv) Every existing officer or servant not transferred to the Minister in pursuance of this Act shall, notwithstanding the powers conferred upon the Minister by this Act, continue to hold his office or situation under the owners of the undertaking under the same tenure and upon the same terms and conditions (including all conditions regarding gratuities, pension, superannuation, sick fund, or any benefits or allowances), whether obtaining legally or by customary practice, as he held it on the date of the passing of this Act, and while performing the same duties shall receive not less salary, wages, or remuneration than under existing regulations, agreements, or established customs of the service he would have been entitled to if this Act had not been passed :
- (v) The Minister may direct that the office or situation of any existing officer or servant which he deems unnecessary shall be abolished : Provided that the Minister shall not require the abolition of any such office which will, in the opinion of the owners of the undertaking, be essential to them in their conduct of the undertaking at the end of the period of possession :
- (vi) If by or in consequence of a direction of the Minister any existing officer or servant is, during the period of possession, required to perform duties such as are not analogous or which are an unreasonable addition to those which he has, prior to the date of the passing of this Act, been required to perform, such officer or servant may relinquish his office or service :
- (vii) Every such officer or servant who so relinquishes his office or service as aforesaid, and every such officer or servant whose services by or

in consequence of any such direction are dispensed with on the ground that his services are not required, or for any reason not being on account of any misconduct or incapacity, or whose salary, wages, or remuneration are reduced on the ground that his duties have been diminished by or in consequence of any such direction, or who otherwise suffers any direct pecuniary loss in consequence of this Act (including any loss of prospective superannuation or other retiring or death allowances, whether obtaining legally or by customary practice), shall be entitled to be paid by the Minister compensation for such pecuniary loss, to be determined by the Treasury, subject to appeal to such standing arbitrator or board of arbitration as aforesaid, in accordance with the provisions contained in section one hundred and twenty of the Local Government Act, 1888, relating to compensation to existing officers, and those provisions shall apply accordingly as if they were herein re-enacted with the necessary modifications:

Section 7.

51 & 52 Vict.
c. 41.

Provided that, in the case of any officer or servant who was appointed to his office as a specially qualified person at an age exceeding that at which public service usually begins, or of any officer or servant who suffers any loss of prospective superannuation or other retiring or death allowances as aforesaid, such addition may be made to the amount of compensation authorised under the said provisions as may seem just, having regard to the particular circumstances of such case: Provided further that the expression in subsection (1) of section one hundred and twenty of the Local Government Act, 1888, "the Acts and Rules relating to Her Majesty's Civil Service" shall mean the Acts and Rules relating to His Majesty's Civil Service which were in operation at the date of the passing of the Local Government Act, 1888.

(2) Any person formerly in the employment of the owners of an undertaking of which or of any part or plant of which possession is retained or taken under this Act, who on the date of the passing of this Act is, though not legally entitled thereto, in receipt of a pension or other superannuation allowance, shall continue to receive from the owners of such undertaking the same pension or allowance on the same terms and conditions as if this Act had not been passed.

(3) Any person who, at the date of the passing of this Act, was in the employment of the owners of an undertaking of which or of any part or plant of which possession is retained or taken under this Act and who, during the period of such possession, would, though not legally entitled thereto, in accordance with customary practice, be granted a pension or superannuation allowance by the owners of such undertaking, shall not be in any worse position in regard thereto by reason of the passing of this Act.

(4) This section shall apply to persons who are, or have been, members of the staff of the Railway Clearing House, or the Irish Railway Clearing House, or any railway conference, in like manner as if they were, or had been, officers or servants of an undertaking of which possession had been taken and the period of possession thereof had been the same as that of a railway undertaking, and to the Railway Clearing System Superannuation Fund, as if it was a pension or superannuation fund established in connexion with an undertaking of which possession has been taken, and as if payments and contributions heretofore made by railway companies thereto were contributions payable by the owners of the undertaking.

8.—(1) Where at the end of the period of possession by the Government of any undertaking or of any part or plant of an undertaking the value Claims against and by the Min-

Section 8.
 ———
 Ister in respect
 of exercise of
 powers.

of the undertaking on a revenue-earning basis has been reduced or enhanced as compared with the value at the commencement of such period, or where during that period the income thereof has been reduced or enhanced, after taking into account in either case—

(a) any capital expenditure by the owners of the undertaking on any works brought into use in the interval ; and

(b) the natural growth of traffic on the undertaking,
 then, if and so far as such reduction or enhancement is due to the exercise by the Minister during that period upon the undertaking in question of the powers under section three of this Act (including such powers as have been hitherto exercised by the Board of Trade as mentioned in paragraph (1)(a) of that section) the owners of the undertaking shall, unless such reduction or enhancement is otherwise provided for by the compensation mentioned in paragraph (1)(a) of that section, be entitled to be recouped, or liable to pay, the amount by which that value has been so reduced or enhanced, and if any question arises as to such amount or the liability to pay the same, or otherwise with respect to the financial relations between the Minister and any person affected by the exercise by the Minister of any of his powers under the said section, the question shall be determined by the Railway and Canal Commission having regard to all the circumstances of the case :

Provided that—

- (i) no claim in respect of any loss alleged to be due to any direction issued by the Minister shall be entertained if the direction was issued with the concurrence of the owners of the undertaking ; and
- (ii) if, whilst an undertaking of which or of any part or plant of which possession has been taken remains in the possession of the Government, the State is authorised by Parliament to acquire the undertaking, nothing in this subsection restricting claims for enhancement attributable to the exercise by the Minister of such powers as aforesaid to cases where the value of the undertaking has been enhanced as compared with the value thereof at the commencement of the period of possession shall be held to affect, one way or the other, any question as to the principle on which the price to be paid on such acquisition is to be based.

(2) Without prejudice to any other form of payment or satisfaction, the Treasury, on the recommendation of the Minister, may, as or as part of the consideration for exercising any powers of control under the said section, guarantee the payment of any dividends or interest on any stock or other securities issued by the owners of an undertaking up to such amount as may be agreed, or the payment of any working expenses of the undertaking, and any sums required to fulfil any such guarantee shall be paid out of moneys provided by Parliament.

(3) Wherever the Minister has expended any sum in the capital improvement of any undertaking, the owners of the undertaking shall be liable to pay to the Minister the unexhausted value of such expenditure at the end of the before-mentioned period, if and so far as such expenditure is not covered by the payments to be made by the owners under the preceding provisions of this section, and that value shall, in default of agreement, be determined by the Railway and Canal Commission.

(4) The owners of the undertaking may satisfy any payment due from them under this section by creating a charge in favour of the Treasury upon the undertaking to such amount and in such form and with such priority as may be agreed, or, in case of difference, may be settled by the Railway and Canal Commission, who shall have due regard to the rights and interests of all parties concerned, but the charge so created shall in no case take priority

to any capital raised by loan or debenture stock issued by the owners of the undertaking, Section 8.

(5) Any claim by a railway company against the Government for compensation in respect of the exercise by the Board of Trade of any powers over or in respect of the undertaking in pursuance of section sixteen of the Regulation of the Forces Act, 1871, or with the consent of the railway company, or otherwise, may be determined by the Railway and Canal Commission in like manner as if it were a claim arising under this section, and the Minister was the person liable to satisfy the claim.

(6) The Minister shall indemnify, and keep indemnified, the owners of any undertaking of which or of any part of which, or of any plant of which possession has been retained or taken, and the owners of any harbour, dock or pier undertaking, against all actions, claims, and demands made in respect of loss or injury alleged to be caused by the carrying out of any directions given by the Minister under section three of this Act, or, as the case may be, any requirements contained in any order made by the Minister under section four of this Act:

Provided that, where the loss or injury is due to the breach of any contractual obligation, the Minister shall not be liable under this provision unless before carrying out the directions the owners of the undertaking have given written notice to the Minister of the existence of the obligation.

9.—(1) It shall be lawful for the Minister to establish, and either by himself or through any other person to work, transport services by land or water, and to acquire either by agreement or compulsorily such land or easements, to construct such works, and to do all such other things, as may be necessary for the purpose:

Power to
establish trans-
port services.

Provided that—

(i) no new transport service shall be established by the Minister until an estimate of the capital expenditure required to complete it, accompanied by details of the scheme for the establishment of the service, has been approved by the Treasury;

(ii) if in the case of any such service such estimate as aforesaid exceeds half a million pounds, or if the establishment of any such service involves the acquisition of land or easements compulsorily, or the breaking up of any roads, the Minister shall not exercise his powers of establishing the service unless authorised to do so by Order in Council a draft whereof has been approved by a resolution passed by both Houses of Parliament, and the Order may incorporate the provisions of the Lands Clauses Acts, subject to such modifications as may be specified in the Order, being modifications of those Acts made or authorised to be made by the Development and Road Improvements Funds Act, 1909, or any other enactment, and the Order may also incorporate or apply any enactments relating to the construction and maintenance of the works in question;

(iii) where it appears to the Minister that the establishment of any such service could properly be undertaken by the owners of any existing undertaking, the Minister shall not himself establish the service without first giving to such owners an opportunity of establishing the service, and, where such an opportunity is given to the owners of an undertaking of which possession has been retained or taken under section three of this Act, and those owners prefer that the establishment of the service should be undertaken by themselves rather than by the Minister, they may require the Minister to give them directions under that section to that effect, but shall not be deemed to have thereby concurred in those directions; and

Section 9.

(iv) the Minister shall not, after two years from the passing of this Act unless Parliament otherwise determines, commence the construction of any new works, or provide equipment for any transport service not established before that date.

(2) The Minister or other person working a service established under this section may charge such rates, fares, tolls, and charges in connexion therewith as may be prescribed by the Minister, subject to reference to the Advisory Committee on Rates hereinafter established, and the expenses of working such services shall be paid out of the revenues derived therefrom, and the Minister shall keep or cause to be kept such accounts of the receipts from and expenditure on the services and in such form, and those accounts shall be audited in such manner as the Treasury may prescribe.

Extraordinary traffic.

41 & 42 Vict. c. 77.

41 & 42 Vict. c. 51.

1 & 2 Geo. 5, c. 45.

10. Any transport service on roads established by the Ministry shall be subject to the provisions relating to extraordinary traffic contained in the Highways and Locomotives (Amendment) Act, 1878 (*a*), or in Scotland the Roads and Bridges (Scotland) Act, 1878, or in Ireland the Public Roads (Ireland) Act, 1911 (as amended by any subsequent enactment).

(*a*) These provisions have been repealed and replaced with variations by s. 54, Road Traffic Act, 1930, Vol. V. and 23 Halsbury's Statutes 649.

Appeal as to bridges.

11. An appeal shall lie to the Minister in respect of any restriction upon any traffic passing over or seeking to cross any bridge or culvert, and the Minister shall have power, notwithstanding any provision in any other statute, to make such order as he may think fit concerning the strengthening, standard of maintenance, and maintenance of any bridge or culvert, the traffic using it or seeking to use it, and apportionment of any expenditure involved, but no order made by the Minister under this section shall enlarge the pecuniary liability of any railway or canal company or impose any new liability upon any such company (*a*).

(*a*) In addition to the protection given to railway and canal companies by this section, see the protection given to local authorities by s. 24, *post*, p. 5209.

6 & 7 Geo. 5, c. 12.

12 (*a*). [*Provisions as to new routes for omnibuses.*]

(*a*) This section is now spent, and was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183). For the right of appeal from a refusal to grant a licence for an omnibus, or against conditions imposed on such a grant for which *inter alia* this section provided, see now s. 14 (3) of the Roads Act, 1920, Vol. V. and 10 Halsbury's Statutes 98, so far as that section still applies, but see (as regards most such vehicles), Part IV. of the Road Traffic Act, 1930; 23 Halsbury's Statutes 654. See also the notes on ss. 4 and 5 of the Town Police Clauses Act, 1889, *ante*, p. 4785.

Powers as to railway wagons.

13.—(1) It shall be lawful for the Minister to purchase privately-owned railway wagons required for use on any railway on such terms and conditions as may be authorised by or under an Order in Council, a draft whereof has been approved by a Resolution passed by both Houses of Parliament, and to work or lease any such wagons when so purchased, or to apportion them among the several railway undertakings in such manner, on such terms, and subject to such conditions as may be provided by or under the Order:

Provided that the Minister shall not be entitled to purchase in England and Wales, or Scotland, or Ireland, respectively, wagons used for the conveyance of any particular class of traffic unless he purchases all privately-owned wagons so used which belong to or are used by persons carrying on business therein, and which comply with the regulations with respect to such wagons in force at the date of such purchase.

(2) Where, in the case of any wagon which has been in use on or before the fifteenth day of May, nineteen hundred and nineteen, the wagon has since that date been the subject of a purchase agreement, the price paid on such purchase shall not be evidence of the value of the wagon in determining the price to be paid by the Minister.

(3) Where the Minister has, in pursuance of his powers under this section, purchased any wagon, any contract then in force for the repair of the wagon shall upon the purchase be determined, unless otherwise agreed with the Minister. Section 13.

(4) Where the Minister exercises his powers of purchasing wagons under this section, or of prohibiting or restricting the use of privately-owned wagons, or of limiting the number of wagons to be so used, the following provisions shall have effect:—

(a) The reasonable facilities which every railway company is required to afford under section two of the Railway and Canal Traffic Act, 1854, as amended or explained by any other Act, shall, where the railway wagons of traders of any class have been purchased, include the provision of suitable railway wagons for the use of traders of that class, and it shall be the duty of the Minister so to exercise his powers of working or disposing of the wagons purchased by him as to enable the railway companies to fulfil their obligations under this provision as fully as may be practicable: 17 & 18 Vict.
c. 31.

(b) Where the provision of wagons is not included in the authorised maximum rates of conveyance, a railway company may charge for the use of such wagons such sums as may be directed by the Minister under section three of this Act, and, if and so far as no such directions are in force, any sums not exceeding those prescribed for the use of such wagons by any Railway Rates and Charges Order applicable thereto:

(c) Notwithstanding the provisions of any other Act or any decision thereunder, in determining what sum may be charged under the provisions of any Railway Rates and Charges Order for the detention of wagons at the premises of any trader, regard shall be had to the requirements and reasonable usages of the trade carried on at those premises in connexion with which such wagons are used.

(5) Notwithstanding any statutory or other provision to the contrary, it shall be lawful for the Minister to make regulations prohibiting or restricting the use on railways of privately-owned wagons or limiting the number of wagons to be so used and prescribing the type and capacity thereof:

Provided that nothing in this Act shall authorise the prohibition of the use on railways of such wagons as comply with regulations for the time being in force made in pursuance of the Railways Clauses Consolidation Act, 1845, the Railways Clauses Consolidation (Scotland) Act, 1845, or any other enactment in force at the date of the passing of this Act, and as are in use, under repair, or in course of construction at that date. 8 & 9 Vict.
c. 20.
8 & 9 Vict
c. 33.

14.—(1) Any capital sum payable under this Act for reduction in the value of an undertaking, or for the purchase of privately-owned railway wagons, or any interest therein, may be discharged in whole or in part, if the Treasury so direct, by the issue of securities, and the amount of such securities equivalent to such capital sum shall, in default of agreement, be determined by the Railway and Canal Commission. Power to
discharge
capital lia-
bilities by issue
of stock.

For that purpose the Treasury may create and issue securities which shall bear interest at such rate and shall be subject to such conditions and regulations as to repayment, redemption, or otherwise as the Treasury may direct or prescribe, and the regulations may apply with the necessary modifications any of the enactments relating to the local loans stock; the interest on any such securities as aforesaid shall—

(a) in the case of securities issued for the purchase of railway wagons, be charged on the revenues derived from the wagons so acquired after payment thereof of working expenses, and, if and so far as such

Section 14.

revenues are insufficient, on the Consolidated Fund of the United Kingdom or the growing produce thereof; and

- (b) in the case of other securities, be charged on the Consolidated Fund of the United Kingdom or the growing produce thereof.

(2) Where the whole or any part of the purchase money for the interest in railway wagons belonging to a wagon finance company is discharged by the issue to the company of such securities as aforesaid, and the company in consequence of the exercise by the Minister of his powers under this Act of purchasing railway wagons is wound up voluntarily, the liquidator may present to the court having jurisdiction to wind up the company a scheme for the discharge in whole or in part of the liabilities of the company to the holders of debentures or debenture stock of the company by means of the transfer to them of an amount of the securities so issued to the company, and, if the court sanctions the scheme, those liabilities may be discharged accordingly.

For the purpose of this subsection, "wagon finance company" means a company whose principal business is the advance of money to colliery companies and other persons for the purpose of the acquisition by them of railway wagons.

Incorporation
of certain sec-
tions.

15. An order made by the Minister authorising the owners of any railway undertaking to acquire any land (including easements), and to construct any works, or an Order in Council authorising the Minister to acquire land compulsorily for the purpose of a railway, shall incorporate sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, or, in Scotland, sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845 (which relate to the working of mines), subject to any statutory modifications thereof then in force.

5 & 6 Geo. 5,
c. 72.

16 (a).—[*Amendment of Special Acts (Extension of Time) Act, 1915.*]

(a) This section is now spent and was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Power to make
advances for
certain
purposes.

17.—(1) The Minister may, subject to the approval of the Treasury, make advances out of the moneys provided by Parliament to any authority, company or person, either by way of grant or by way of loan, or partly in one way and partly in another, and upon such terms and conditions as he thinks fit for any of the following purposes:—

- (a) The construction, improvement, or maintenance of railways, light railways, or tramways:
- (b) The construction, improvement or maintenance of roads, bridges, or ferries:
- (c) The construction, improvement or maintenance of harbours, docks or piers:
- (d) The construction, improvement or maintenance of canals or inland navigations:
- (e) The promotion and improvement of transport services by land or water:

And the power of the Treasury on the recommendation of the Development Commissioners to make advances for any of the purposes aforesaid shall cease and determine, except as respects advances for the construction improvement, or maintenance of harbours in connexion with the improvement and development of fisheries, in which case the Development Commissioners shall consult with the Minister before reporting on any application referred to them:

Provided that the Minister shall not make an advance exceeding one million pounds at any one time for the purpose of any work, unless specially authorised to do so by a Resolution of the House of Commons.

(2) For the purpose of advances for the construction, improvement, or maintenance of roads, the Minister may, after consultation with the Roads Committee hereinafter referred to and the local authorities affected, classify roads in such manner as he thinks fit (a), and may, by agreement with the local authority (b), defray half the salary and establishment charges of the engineer or surveyor to a local authority responsible for the maintenance of such roads, subject to the condition that the appointment, retention, and dismissal of such engineer or surveyor, and the amount of such establishment charges, shall be subject to the approval of the Minister (c). Section 17.

(a) It is upon the classification of roads under this provision that the transfer of roads in urban districts under s. 31 of the L. G. A., 1929, Vol. V., *post*, to county councils depends.

(b) As to such agreements, see Circulars of 1922 and 1929, *ante*, pp. 3433 and 3434.

(c) Nothing in Part IV. of the L. G. A., 1933, *ante*, p. 860, affects the terms of any agreement made under this subsection with respect to the appointment, retention or dismissal of any engineer or surveyor of the local authority responsible for the maintenance of the roads (L. G. A., 1933, s. 124 (3), *ante*, p. 914).

18 (a).—[Accounts, statistics and returns.]

(a) This section is now spent and was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

19. The provisions of the Railway and Canal Traffic Act, 1888, as amended by any subsequent enactment, relating to the procedure for the determination of questions by the Commission under that Act, including the provisions relating to appeals, shall apply to the determination of questions referred to the Commission under this Act, as if they were herein re-enacted and in terms made applicable to this Act: Provisions as to the Railway and Canal Commission. 51 & 52 Vict. c. 25.

Provided that—

- (a) the Commission may, in any case in which they think it expedient to do so, call in the aid of one or more assessors, specially qualified, and hear the case wholly or partially with the assistance of such assessors;
- (b) the Commission may hold a local inquiry for the purposes of this section by any one of their members, or by any officer of the Commission or other person whom they may direct to hold the same, and the said provisions of the Railway and Canal Traffic Act, 1888, except the provisions relating to appeals, shall, so far as applicable, apply to such inquiries, and any officer or person directed to hold an inquiry shall have power to administer oaths and shall report the result of the inquiry to the Commission;
- (c) the discretion of the Commission with respect to costs shall not be limited in the manner provided by section two of the Railway and Canal Traffic Act, 1894.

20.—(1) The Minister may hold such inquiries as he considers necessary or desirable for the purposes of this Act, and the Minister, and, if authorised by the Minister, the person appointed to hold any such inquiry, may by order require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend as a witness and give evidence or to produce any documents in his possession or power which relate to any matter in question at the inquiry, and are such as would be subject to production in a court of law, and, if any person fails without reasonable excuse to comply with any of the provisions of any such order, he shall be liable, on summary conviction, to a fine not exceeding five pounds, and the person holding the inquiry shall have power to take evidence on oath and for that purpose to administer oaths. Power to hold inquiries.

(2) Notices of inquiries may be given and published in accordance with such general or special directions as the Minister may give.

Section 20. (3) The powers of the Minister under this section shall be in addition to and not in derogation of any powers of holding inquiries transferred to him from any other Government Department under this Act.

This section is applied by a number of later statutes; see, *e.g.*, the Road Traffic Act, 1930, s. 114, Vol. V. and 23 Halsbury's Statutes 684; the London Passenger Transport Act, 1933, s. 102, Vol. V. and 26 Halsbury's Statutes 844; the Road and Rail Traffic Act, 1933, s. 47, Vol. V. and 26 Halsbury's Statutes 911; and the London Passenger Transport Act, 1934, s. 114 (1) (27 Halsbury's Statutes 642). As to local inquiries generally, see notes to L. G. A., 1933, s. 290, *ante*, p. 1170.

Rates advisory
committee.

21.—(1) For the purpose of giving advice and assistance to the Minister with respect to and for safeguarding any interests affected by any directions as to rates, fares, tolls, dues, and other charges or special services, a committee shall be appointed consisting of five persons, one being a person of experience in the law (who shall be chairman) nominated by the Lord Chancellor, two being representatives of the trading and agricultural interests nominated by the Board of Trade, after consultation with the Associated Chambers of Commerce, the Central Chamber of Agriculture, and other interests concerned, one being a representative of transportation interests nominated by the Minister, one being a representative of labour interests nominated by the Minister of Labour, after consultation with the Parliamentary Committee of the Trades Union Congress and other interests concerned, together with, if deemed advisable, one additional member who may at the discretion of the Minister be nominated from time to time by him.

(2) Before directing any revision of any rates, fares, tolls, dues, or other charges, or of any special services, the Minister shall refer the matter to the committee for their advice, and they shall report thereon to him, and, where such revision is for the purpose of an increase in the net revenue of any undertakings which the Minister determines to be necessary, the committee shall also advise as to the best methods of obtaining such increase from the different classes of traffic, having due regard to existing contracts and the fairness and adequacy of the methods proposed to be adopted. Before prescribing the limits of rates, tolls, or charges in connexion with a new transport service established under section nine of this Act, the Minister shall refer the matter to the Committee for their advice.

(3) The committee, before reporting or advising on any matters referred to them under this section, shall, unless in their discretion they consider it unnecessary or undesirable to do so, give such public notice as they think best adapted for informing persons affected of the date when and the place where they will inquire into the matter, and any persons affected may make representations to the committee, and, unless in their discretion the committee consider it unnecessary, shall be heard at such inquiry, and, if the committee in their discretion think fit, the whole or any part of the proceedings at such inquiry may be open to the public:

Provided that, for the purpose of this provision, the council of any city, borough, burgh, county, or district shall be deemed to be persons affected in any case where such council or any persons represented by them may be affected by any such proposed revision as aforesaid.

(4) The committee shall hear such witnesses and call for such documents and accounts as they think fit, and shall have power to take evidence on oath, and for that purpose any member of the committee may administer oaths.

(5) There shall be paid out of moneys provided by Parliament to all or any of the members of the committee such salaries or other remuneration as the Minister, with the consent of the Treasury, may determine.

(6) For the purposes of this section, "special services" means the services mentioned in section five of the schedule to the orders relating to railway rates and charges, and in the corresponding sections of the schedules to the orders relating to canal tolls, rates and charges, confirmed by various Acts

passed in the years eighteen hundred and ninety-one to eighteen hundred and ninety-four. **Section 21**

22. [*Roads advisory committee.*]

Repealed by the Road and Rail Traffic Act, 1933, s. 48, Sched. III., Vol. V. and 26 Halsbury's Statutes 912, 915.

23.—(1) For the purpose of giving advice and assistance to the Minister in connexion with the exercise and performance of his powers and duties, the Minister shall set up a panel of experts, and of impartial persons of wide commercial and trading experience, appointed from nominees, after consultation with the various undertakings and interests concerned, of the various classes of undertakings affected by this Act, and of labour, trading interests, local authorities, and such other interests as he may deem desirable. Advisory committees.

(2) Before exercising any of the powers under subsection (1) (b) of section three of this Act, to the exercise of which the owners of the undertaking concerned object, or establishing new transport services by land or water the Minister shall refer the matter to a committee selected by him from the said panel.

(3) The advisory panel or any committee to whom any matter is referred under this section shall, before reporting or advising, if they see fit, give public notice and permit any person affected or likely to be affected to place his views before them either orally or in writing.

(4) Any member of the advisory panel, or any committee thereof, or of any other committee established under this Act, for giving advice and assistance to the Minister, shall be considered to be acting entirely in a confidential capacity.

24. Nothing in this Act shall be construed as giving power to the Minister to impose any conditions upon a local authority which shall entail expenditure without consent of such local authority, or of the Minister of Health, or in Scotland the Secretary for Scotland, or in Ireland the Local Government Board for Ireland. Consent of local authority.

25.—(1) The Minister may appoint such secretaries, officers, and servants of the Ministry as the Minister may, subject to the consent of the Treasury as to number, determine. Staff and remuneration.

Provided that there shall not be more than one paid parliamentary secretary of the Ministry.

(2) There shall be paid out of moneys provided by Parliament . . . to the . . . secretaries [other than the Parliamentary Secretary], officers, and servants of the Ministry such salaries or remuneration as the Treasury may from time to time determine.

(3) The expenses of the Ministry, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(4) There shall be transferred and attached to the Ministry such of the persons employed under any other Government Department in or about the execution of the powers and duties transferred by or under this Act to the Minister, as the Minister and the other Government Department, with the sanction of the Treasury, may determine.

(5) The Minister may from time to time distribute the business of the Ministry amongst the several persons transferred or attached thereto in pursuance of the foregoing provisions of this section in such manner as he may think right, and those officers shall perform such duties in relation to that business as may be directed by the Minister :

Provided that such persons shall be in no worse position as respects the

Section 25. tenure of office, salary or superannuation allowances than they would have been if this Act had not been passed.

The variations noted in this section were made by the Ministers of the Crown Act, 1937, Scheds. III., IV. ; 30 Halsbury's Statutes 122, 123.

Seal, style and
acts of Minister.

26.—(1) The Minister may sue and be sued in respect of matters, whether relating to contract tort or otherwise arising in connexion with his office, by the name of the Minister of Transport, and may for all purposes be described by that name and shall be responsible for the acts and defaults of the officers and servants and agents of the Ministry in like manner and to the like extent as if they were his servants, *and costs may be awarded to or against the Minister (a).*

(2) The Minister shall have an official seal, which shall be officially and judicially noticed, and shall be authenticated by the signature of the Minister, or of a secretary, or any person authorised by the Minister to act in that behalf.

(3) For the purpose of acquiring and holding land, the Minister for the time being shall be a corporation sole by name of the Minister of Transport, and all land vested in the Minister shall be held in trust for His Majesty for the purposes of the Ministry of Transport.

(4) Upon and by virtue of the appointment of any person to be Minister, the benefit of all deeds, contracts, bonds, securities or things in action vested in his predecessor at the time of his predecessor ceasing to hold office, shall be transferred to and vested in and enure for the benefit of the person so appointed, in the same manner as if he had been contracted with instead of his predecessor, and if his name had been inserted in all such deeds, contracts, bonds or securities instead of the name of his predecessor.

(5) Subsections (2) to (4) of section eleven, and subsections (2) and (3) of section twelve of the New Ministries and Secretaries Act, 1916, shall apply to the Minister and the Ministry of Transport and to the office of Minister of Transport in like manner as they apply to the Ministers and Ministries mentioned in those sections.

(a) The words in italics were repealed by the Administration of Justice (Miscellaneous Provisions) Act, 1933, s. 10 (3) (26 Halsbury's Statutes 92). As to costs in Crown proceedings, see *ibid.*, s. 7 (26 Halsbury's Statutes 91).

27. [*Ability of Minister and secretaries to sit in Parliament.*]

Repealed by the Ministers of the Crown Act, 1937, Sched. IV. (30 Halsbury's Statutes 123).

Provisions as to
Orders in
Council.

28.—(1) Before any Order in Council under this Act is made, notice of the proposal to make the Order and of the place where copies of a draft of the Order can be obtained shall be published in the London, Edinburgh, and Dublin Gazette, as the case may require, and in such other manner as the Minister thinks best adapted for ensuring publicity.

(2) An Order in Council under this Act may be altered or revoked by a subsequent order.

Provision as to
orders and
Orders in
Council re-
lating to the
acquisition of
land and the
construction of
works.

29.—(1) The Minister may make rules in relation to matters preliminary to the making of Orders and Orders in Council under this Act which authorise the acquisition of land or easements, or the breaking up of road and the construction of works, including the publication of notices and advertisements, and the deposit of plans and sections and books of reference to those plans, and the manner in which and the time within which representations or objections are to be made, and to the holding of local enquiries.

Any rules so made shall be laid before Parliament as soon as they are made and shall have the same effect as if enacted in this Act: Provided

that, if an Address is presented to His Majesty by either House of Parliament within twenty-one days on which that House has sat next after any such rules are so laid praying that any such rule may be annulled, His Majesty may annul the rule, and it shall thenceforth be void, but without prejudice to the validity of anything done thereunder. Section 29.

(2) The rules of procedure set out in the Second Schedule to this Act shall apply to the making of any Order under paragraph (d) of subsection (1) of section three of this Act and of any draft of an Order in Council to be submitted to Parliament under section nine of this Act.

(3) (a) The Minister on publication of notice of a proposal to make an order under paragraph (d) of subsection (1) of section three of this Act, shall, *except as hereinafter provided*, send to the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons a copy of the draft Order, and if within fourteen days of the receipt of the copy, if Parliament is then sitting, or within one month thereof if Parliament is not then sitting, either such Chairman reports to the Minister that he is of opinion that the proposals of the draft Order are of such a character or magnitude that they ought not to be proceeded with without the authority of Parliament, the Minister shall not make the Order unless or until the draft Order has been approved by a Resolution passed by both Houses of Parliament, and, if the Resolution of either House directs that the proposals shall be dealt with by Private Bill and not by such Order as aforesaid, notices published and served and deposits made for the purpose of the proposed Order shall, subject to standing order, be held to have been published, served and made for a Private Bill applying for similar powers:

Provided that this subsection shall not apply to any Order with respect to which the Minister certifies that the acquisition of the land or easements authorised to be acquired thereunder and the works authorised to be constructed thereunder do not involve an estimated expenditure exceeding one million pounds, nor to any Order of any class which may be exempted from the provisions of this subsection by rules made by the said chairmen.

(a) Words in italics in this subsection repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

30.—(1) This Act may be cited as the Ministry of Transport Act, 1919. Short title and interpretation.

(2) In this Act, unless the context otherwise requires—

The expression "Government Department" includes any Government Department and any Minister of the Crown acting as the head of a Government Department, and for the purposes of this Act the Road Board and the Lord Lieutenant and the Privy Council of Ireland, the Commissioners of Public Works in Ireland, and the Congested Districts Board for Ireland and the Commissioners of the Caledonian Canal and the Commissioners of the Conservancy of the River Mersey shall be deemed to be Government Departments;

The expression "tramway" includes a trackless trolley vehicle system; The expression "easement" includes any right in or over land;

The expression "undertaking" includes any services carried on as ancillary to the principal business of the undertaking;

The expression "transport services by water," shall not include any transport service by sea other than such as is, or could under their existing statutory powers, or any extension thereof which may hereafter be authorised by Parliament, be established by the owners of any undertaking of which the Minister is for the time being in possession under this Act.

Section 30. Where an undertaking is leased to or worked by a company or person other than the owners, the expression "the owners of an undertaking" shall include that company or person, except where such an interpretation is inconsistent with the terms of the lease or working agreement, and except for the purposes of the provisions of this Act relating to payments to be made to or by the owners of an undertaking in respect of any reduction or enhancement of the value of the undertaking.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

TRANSITORY PROVISIONS.

1. In the construction and for the purposes of any Act of Parliament, any judgment, decree, order, award, deed, contract, regulation, byelaw, or other document passed or made before the transfer to the Minister or Admiralty or Secretary of State from any other Government Department of any powers or duties by or under this Act, but so far only as may be necessary for the purpose of such transfer, the name of the Minister or Admiralty or Secretary of State shall be substituted for the name of the other Government Department.

2. Where anything has been commenced by or under the authority of any other Government Department before the transfer to the Minister or Admiralty or Secretary of State of any powers or duties by or under this Act, and such thing is in relation to the powers or duties so transferred, such thing may be carried on and completed by or under the authority of the Minister or Admiralty or Secretary of State.

3. Where at the time of the transfer of any powers or duties by or under this Act any legal proceeding is pending to which any Government Department is a party, and such proceeding has reference to the powers and duties transferred by or under this Act, the Minister or Admiralty or Secretary of State shall be substituted in such proceeding for the other Government Department, and such proceeding shall not abate by reason of the substitution.

Sections 9 and 29.

SECOND SCHEDULE.

1.—(1) Before any Order under section 3 (1) (d) of this Act is made, or any draft Order in Council under section 9 of this Act is submitted to Parliament, notice shall be published in such manner as the Minister may think best adapted for informing persons affected of the proposal to make the Order or Order in Council, and of the place or places where copies of the draft Order or Order in Council may be obtained, and of the place or places where plans of any lands (including easements) proposed to be compulsorily acquired, and plans and sections of any works proposed to be constructed and books of reference to those plans may be inspected and of the time (which shall not be less than twenty-one days) within which any objection made with respect to the draft by or on behalf of persons affected must be sent to the Minister.

(2) Every objection must be in writing, and state—

(a) the specific grounds of objection; and

(b) the omissions, additions, or modifications asked for.

(3) The Minister shall consider any objection made by or on behalf of any person, being in the case of a draft Order a person affected, and in the case of a draft Order in Council a person whose property will be injuriously affected by reason of the acquisition of the land or the construction of the proposed works, if the objection is sent to the Minister within the required time, and may, if thought fit, amend the draft, and shall then cause the amended draft to be dealt with in like manner as an original draft.

(4) Where the Minister does not amend or withdraw a draft to which any objection has been made, then (unless the objection either is withdrawn or appears to him to be frivolous) he shall before making the Order or submitting the draft Order in Council to Parliament direct an inquiry to be held in the manner hereinafter provided, and may, after considering the report of the person who held the inquiry, make the Order or submit the draft Order in Council to Parliament either without modification or subject

to such modification as he may think fit, or may refuse to make the Order or submit the draft Order in Council to Parliament. **Sched. II.**

2.—(1) The Minister may appoint a competent and impartial person to hold an inquiry with regard to any draft and to report to him thereon.

(2) The inquiry shall be held in public, and any person who being entitled to do so has duly made an objection, may appear at the inquiry either in person or by counsel, solicitor, or agent.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Minister.

(5) The fee to be paid to the person holding the inquiry shall be such as the Minister may direct.

ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919.

(9 & 10 GEO. 5, c. 57.)

An Act to amend the law as to the Assessment of Compensation in respect of Land acquired compulsorily for public purposes and the costs in proceedings thereon. [19th August 1919.]

This Act does not give any new power to acquire land, its function being only to provide machinery for the ascertainment of the purchase price or compensation, and to prescribe rules for the assessment of compensation so as to enable the bodies concerned to obtain land on reasonable terms. In cases where it applies there will no longer be two arbitrators and an umpire or a jury or, in cases of small claims, a reference to justices. In lieu of these superseded methods there will be either (1) a reference by consent to an agreed arbitrator or (2) a reference by consent to the Commissioners of Inland Revenue, or (3) failing a consent to either of the former methods, a reference to an official arbitrator.

1.—(1) Where by or under any statute (whether passed before or after the passing of this Act) (a) land (b) is authorised to be acquired compulsorily (c) by any Government Department or any local or public authority (d), any question of disputed compensation, and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease, shall be referred to and determined by the arbitration of such one of a panel of official arbitrators to be appointed under this section as may be selected in accordance with rules made by the Reference Committee under this section (e). Tribunal for assessing compensation in respect of land compulsorily acquired for public purposes.

(2) Such number of persons, being persons with special knowledge in the valuation of land, as may be appointed for England and Wales, Scotland and Ireland by the Reference Committee, shall form a panel of persons to act as official arbitrators for the purposes of this Act in England and Wales, Scotland and Ireland respectively: Provided that of the members of the said panel for England and Wales one at least shall be a person having special knowledge of the valuation of land in Wales and acquainted with the Welsh language.

(3) A person appointed to be a member of the panel of official arbitrators shall hold office for such term certain as may be determined by the Treasury before his appointment, and whilst holding office shall not himself engage, or be a partner of any other person who engages, in private practice or business.

(4) There shall be paid out of moneys provided by Parliament to official arbitrators such salaries or remuneration as the Treasury may determine.

Section 1.

(5) The Reference Committee—

- (a) for England and Wales shall consist of the Lord Chief Justice of England, the Master of the Rolls and the President of the Surveyors' Institution;
- (b) for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk and the Chairman of the Scottish Committee of the Surveyors' Institution;
- (c) for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland and the President of the Surveyors' Institution, or (if the President of the Surveyors' Institution thinks fit) a person, being a member of the council of that institution and having special knowledge of valuation of land in Ireland appointed by him to act in his place.

The tribunal appointed under this section may only be excluded from the determination of a question of disputed compensation to which the Act applies by the agreement of both parties to a submission to a single agreed arbitrator or the Commissioners of Inland Revenue (s. 8 (1), *post*, p. 5218).

Where an official arbitrator selected from the panel had been appointed to assess compensation and after two hearings had been taken ill and resigned his appointment, the Reference Committee revoked the appointment in the part heard case and appointed a new arbitrator. The first arbitrator had then recovered from his illness and was prepared to complete the hearing of the part heard case, but in the meantime had engaged in private practice. In an action for a declaration that the notice revoking the first appointment was *ultra vires*, it was held that the first arbitrator having become disqualified under sub-s. (3) from acting as an official arbitrator and having resigned from the panel, the Committee had full power under the rules to appoint a new arbitrator (*Gross, Sherwood and Heald v. Essex C. C.*, [1927] 1 Ch. 205; 91 J. P. 17; Digest Supp.). A company does not, by nominating under protest an arbitrator in pursuance of the Lands Clauses Consolidation Act, 1845, *ante*, p. 4104, admit that the case is one entitling the claimant to any compensation (*Sutton Harbour Improvement Co. v. Hitchens* (1851), 1 De G. M. & G. 161; Digest Supp.).

(a) The compensation payable in respect of laying a sewer under s. 16 of the P. H. A., 1875 (13 Halsbury's Statutes 633) (now replaced by s. 15 of the P. H. A., 1936, *ante*, p. 26), must be determined under this Act (*Thurrock, Grays and Tilbury Joint Sewerage Board v. Thames Land Co., Ltd.* (1925), 90 J. P. 1; 23 L. G. R. 648; Digest Supp.).

In a case where powers were given to a railway company by private Act to purchase certain lands, but not compulsorily, and the time for exercise was subsequently extended in favour of the London Passenger Transport Board who had acquired the railway company's undertaking and who had general compulsory powers, it was held that this Act applied though it would not have done so had the power of purchase been exercised before the transfer of the undertaking (*Drapers Co. v. London Passenger Transport Board*, [1937] Ch. 344; [1937] 2 All E. R. 12; Digest Supp.).

(b) "Land" is defined in s. 12 (2), *post*, p. 5220.

(c) The Act has no application in cases of agreements for sale and purchase. This is so even where the agreement takes the form of a statutory bargain embodied in a special Act (*Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27; 86 J. P. 25; Digest Supp.).

(d) "Local authority" is not defined, but the expression usually means any body of persons who receive and expend any local rate. See the definition in the Local Government (Emergency Provisions) Act, 1916, s. 21, *ante*, p. 5151. The expression "public authority" is defined in s. 12 (2), *post*, p. 5220. See as to this definition, *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299.

(e) See the Rules made hereunder, *ante*, p. 3127. The power of the Reference Committee under this section includes a power to replace an arbitrator who becomes incapable of continuing the arbitration (*Gross, Sherwood and Heald, Ltd. v. Essex County Council*, [1927] 1 Ch. 205; 91 J. P. 17; Digest Supp.).

Rules for the assessment of compensation.

2. In assessing compensation, an official arbitrator (a) shall act in accordance with the following rules :—

- (1) No allowance shall be made on account of the acquisition being compulsory (b) :
- (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a

Section 2.

willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

- (3) The special suitability or adaptability (c) of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bonâ fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration (d):
- (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account:
- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bonâ fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:
- (6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land (e).

For the purposes of this section, an official arbitrator shall be entitled to be furnished with such returns and assessments as he may require.

This section prescribes the principles upon which compensation is to be assessed in cases to which this Act applies unless the Act under which the land is acquired makes special provision to the contrary, e.g. Housing Act, 1936, s. 40, *ante*, p. 1650 (s. 7 (1), *post*, p. 5218).

(a) The rules laid down in this section also apply when the parties agree upon an arbitrator. See s. 8 (3), *post*, p. 5219.

(b) It had become a general practice, though it is not expressly authorised by the Lands Clauses Acts, in assessing the value of land taken, to add a percentage (usually 10 per cent.) for what is called compulsory purchase. The practice has been defended on various grounds, one of them being that the addition is to cover the cost to which the owner is put in purchasing other land or in reinvesting the purchase money. In cases to which this Act applies no such allowance is to be made. The exclusion of that allowance in cases where land was being purchased by local authorities had before this Act been introduced in the Small Holdings and Allotments Act, 1908, s. 39 (5), *ante*, p. 5076; the Development and Road Improvement Funds Act, 1909, Sched., r. (2) (c), *ante*, p. 5113; and the Housing, Town Planning, &c., Act, 1909, Sched. I, r. 3 (now repealed).

(c) See as to the meaning of this expression *Re Lucas & Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; 72 J. P. 437; 11 Digest 127, 169; *Sidney v. N. E. Ry. Co.*, [1914] 3 K. B. 629; 11 Digest 128, 171.

(d) See hereon *Percival v. Peterborough Corporation*, [1921] 1 K. B. 414; 85 J. P. 77; 11 Digest 128, 173, in which it was decided that this proviso is of general application and is not limited to cases of special suitability or adaptability within the rule.

(e) The provisions of this rule do not give a claimant a right to compensation for good-will or injury by severance if no such right is given by the statute under which the land is acquired (*Courtaulds, Ltd. v. City of London Corporation*, [1926] 2 K. B. 506; 90 J. P. 164). They do no more than leave unaffected the right which the owner would, before the Act, have had in a proper case to claim that the compensation should be increased because he had been disturbed (*Horn v. Sunderland Corporation*, [1941] 1 All E. R. 480; 105 J. P. 223). Therefore an owner of land who himself farms it cannot claim both the value of the land as building land and for compensation for disturbance of his farming business, since he could only realise the building value by abandoning the farming (*ibid.*).

A builder whose land is acquired is not entitled to compensation for loss of profits (*Collins v. Feltham U. D. C.*, [1937] 4 All E. R. 189; Digest Supp.; *Wimpey & Co. v. Middlesex C. C.*, [1938] 3 All E. R. 781; Digest Supp.).

Section 3.

Provision as to
procedure
before official
arbitrators.

3.—(1) In any proceedings before an official arbitrator, not more than one expert witness on either side shall be heard unless the official arbitrator otherwise directs :

Provided that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals, or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.

(2) It shall not be necessary for an official arbitrator to make any declaration before entering into the consideration of any matter referred to him.

(3) The official arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

(4) The official arbitrator shall be entitled to enter on and inspect any land which is the subject of proceedings before him.

(5) Proceedings under this Act shall be heard by an official arbitrator sitting in public.

(6) The fees to be charged in respect of proceedings before official arbitrators shall be such as the Treasury may prescribe (a).

(7) Subject as aforesaid, the Reference Committee may make rules regulating the procedure before official arbitrators (b).

The provisions of this section except those of sub-ss. (5) and (6) will apply also to an arbitrator agreed upon by the parties (see s. 8 (3), *post*, p. 5219).

(a) See the rules of 1931, *ante*, p. 3141.

(b) See the rules, *ante*, p. 3127.

Consolidation
of proceedings
on claims for
compensation
in respect of
various interests
in the same
land.

4. Where notices to treat have been served for the acquisition of the several interests in the land to be acquired, the claims of the persons entitled to such interests shall, so far as practicable, and so far as not agreed and if the acquiring authority so desire, be heard and determined by the same official arbitrator, and the Reference Committee may make rules providing that such claims shall be heard together, but the value of the several interests in the land having a market value shall be separately assessed.

The provisions of this section will not apply where an arbitrator has been agreed upon. See the rules (r. 7), *ante*, p. 3128.

Provisions as
to costs.

5.—(1) Where the acquiring authority has made an unconditional offer (a) in writing of any sum as compensation to any claimant and the sum awarded by an official arbitrator to that claimant does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made.

(2) If the official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him giving sufficient particulars (b) and in sufficient time to enable the acquiring authority to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by the acquiring authority at the time when in the opinion of the official arbitrator sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer.

The notice of claim (b) shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, and when such a notice of claim has been delivered the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw (c) any notice to treat

which has been served on the claimant or on any other person interested in the land authorised to be acquired, but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn (*d*), and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator.

Section 5.

(3) Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with the provisions of the last preceding subsection, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4) Subject as aforesaid, the costs of an arbitration under this Act shall be in the discretion of the official arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and the official arbitrator may in any case disallow the cost of counsel.

(5) An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed.

(6) Where an official arbitrator orders the claimant to pay the costs, or any part of the costs, of the acquiring authority, the acquiring authority may deduct the amount so payable by the claimant from the amount of the compensation payable to him.

(7) Without prejudice to any other method of recovery, the amount of costs ordered to be paid by a claimant, or such part thereof as is not covered by such deduction as aforesaid shall be recoverable from him by the acquiring authority summarily as a civil debt (*e*).

(8) For the purpose of this section, costs include any fees, charges, and expenses of the arbitration or award.

The provisions of this section apply also to an agreed arbitrator (*s. 8 (3) post*, p. 5219). The arbitrator may award a lump sum as costs. If an unconditional offer is made by the acquiring authority and no unconditional offer is made by the claimant, the arbitrator has an absolute discretion as to costs if the amount awarded exceeds the unconditional offer of the acquiring authority (*Bradshaw v. Air Council*, [1926] 1 Ch. 329; 24 L. G. R. 351; Digest Supp.).

An agreement between the parties as to costs not communicated to an arbitrator may be enforced by an action on the agreement (*Mansfield v. Robinson*, [1928] 2 K. B. 353; 92 J. P. 126; Digest Supp.).

(*a*) As to this see *Fisher v. G. W. Ry. Co.*, [1911] 1 K. B. 551; 11 Digest 200, 790.

(*b*) There was previously no obligation upon a claimant to formulate a claim unless he elected to have the compensation settled by arbitration instead of by a jury, and even then he need only give the total claimed. The exact nature of the claimant's interest must now be given, and the claimant must give details of the compensation claimed, and must distinguish the amounts under separate heads and show how the amount under each head is calculated.

(*c*) Formerly, a notice to treat could only be withdrawn by consent.

(*d*) These expenses do not include ground rent, or interest on money borrowed to purchase a head lease, during the currency of the notice to treat (*L. C. C. v. Montague Burton, Ltd.*, [1934] 1 K. B. 360; 97 J. P. 318; Digest Supp.).

(*e*) That is to say by proceedings under the Summary Jurisdiction Act, 1879, ss. 6, 35 (11 Halsbury's Statutes 325, 342).

6.—(1) The decision of an official arbitrator (*a*) upon any question of fact, shall be final and binding on the parties, and the persons claiming under them respectively, but the official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law (*b*) arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court.

Finality of award and statement of special cases.

Section 6.

(2) The decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other court.

(a) S. 6 of the Arbitration Act, 1934, does not apply to an official arbitrator under this Act (*All Souls' College, Oxford v. Middlesex C. C.*, [1938] 2 All E. R. 586; Digest Supp.), and his award carries interest only from its date (*Collins v. Feltham U. D. C.*, ante, p. 5215).

(b) Including a question of title (*Goodwin Foster Brown, Ltd. v. Derby Corporation*, [1934] 2 K. B. 23; Digest Supp.).

The provisions of this section apply also to an agreed arbitrator (s. 8 (3), post, p. 5219).

Where an award has been given under this section in the form of a special case, the case should be set down in the Crown Paper list (*Hewitt v. Essex C. C.* (1927), 92 J. P. 36; 26 L. G. R. 48; Digest Supp.).

Where an official arbitrator had during the inquiry by him stated a case for the opinion of the court and had embodied the decision of the court in his final award, an application to set the award aside on the ground that it was bad in law was dismissed in view of sub-s. (2) in the text, and it was held that no appeal would lie from such dismissal (*Northwood v. L. C. C.* (No. 2) (1927), 91 J. P. 93; 137 L. T. 49; Digest Supp.).

Effect of Act on existing enactments.

7.—(1) The provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall, in relation to the matters dealt with in this Act, have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect (a):

53 & 54 Vict. c. 70.
6 & 7 Geo. 5, c. 63.

Provided that nothing in this Act relating to the rules for assessing compensation shall affect any special provisions as to the assessment of the value of land acquired for the purposes of Part I. or Part II. of the Housing of the Working Classes Act, 1890, or under the Defence of the Realm (Acquisition of Land) Act, 1916, and contained in those Acts respectively, or any Act amending those Acts, if and so far as the provisions in those Acts are inconsistent with the rules under this Act and the provisions of the Second Schedule to the Housing of the Working Classes Act, 1890, as amended by any subsequent enactment (except paragraphs (4), (5), (29), and (31) thereof) shall apply to an official arbitrator as they apply to an arbitrator appointed under that schedule, and an official arbitrator may exercise all the powers conferred by those provisions on such arbitrator.

8 Edw. 7, c. 36.

(2) The provisions of this Act shall apply to the determination of the amount of rent or compensation payable in respect of land authorised to be hired compulsorily under the Small Holdings and Allotments Act, 1908 (b), or any Act amending that Act, and any matter required thereby to be determined by a valuer appointed by the [Minister] of Agriculture and Fisheries shall be determined by an official arbitrator in accordance with this Act.

The provisions of this section in so far as they apply to an official arbitrator will also apply to an agreed arbitrator (s. 8 (3)). Words in italics in this section were repealed by the Housing Act, 1925, s. 136 and Sched. VI. (13 Halsbury's Statutes 1071, 1077). See now s. 40 of the Act of 1936, ante, p. 1650.

(a) See hereon *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27; 86 J. P. 25; Digest Supp.; and *Courtanlds, Ltd. v. City of London Corporation*, [1926] 2 K. B. 506; 90 J. P. 164. This provision can only apply to Acts existing on September 1, 1919, and, in so far as the provisions of a later Act are inconsistent herewith, the provisions of the later Act prevail (*Vauxhall Estates, Ltd. v. Liverpool Corporation*, [1932] 1 K. B. 733; 95 J. P. 224; Digest Supp.; *Ellen Street Estates, Ltd. v. Minister of Health*, [1934] 1 K. B. 590; 98 J. P. 167; Digest Supp.).

(b) See this Act, s. 39 (2), ante, p. 5076.

Power to refer to Commissioners of Inland Revenue or to agreed arbitrator.

8.—(1) Nothing in this Act shall prevent, if the parties so agree, the reference of any question as to disputed compensation or apportionment of rent to the Commissioners of Inland Revenue or to an arbitrator agreed on between the parties.

(2) Where a question is so referred to the Commissioners of Inland Revenue, the Commissioners shall not proceed by arbitration, but shall cause an assessment to be made in accordance with the rules for the assessment of compensation under this Act, and the following provisions shall have effect:—

Section 8.

- (a) The parties shall comply with any direction or requirements as to the furnishing of information (whether orally or in writing) and the production of documents and otherwise;
- (b) Any officer of the Commissioners appointed for the purpose shall be entitled to enter on and inspect any land which is subject to the reference to them;
- (c) The Commissioners, if either party so desires within such time as the Commissioners may allow, shall give the parties an opportunity of being heard before such officer of the valuation office of the Commissioners as the Commissioners may appoint for the purpose;
- (d) The assessment when made shall be published to the parties and take effect as if it were an award of an official arbitrator under this Act;
- (e) If either party refuses or neglects to comply with any direction or requirement of the Commissioners, the Commissioners may decline to proceed with the matter, and in that case the question shall be referred to an official arbitrator as if there had been no reference to the Commissioners, and the official arbitrator when awarding costs shall take into consideration any report of the Commissioners as to the refusal or neglect which rendered such a reference to him necessary.

(3) Where a question is referred to an arbitrator under sub-section (1) of this section, the provisions of this Act, except sections one and four and so much of section three as requires proceedings to be in public and as provides for the fixing of fees, shall apply as if the arbitrator was an official arbitrator.

(4) Either party to a claim for compensation may require the Commissioners for Inland Revenue to assess the value of the land in respect of which the claim arises, and a copy of any such assessment shall be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment shall be admissible in evidence of that value in proceedings before the official arbitrator, and the officer who made the assessment shall attend, if the official arbitrator so require, to answer such questions as the official arbitrator may think fit to put to him thereon.

9. An official arbitrator may on the application of any person certify the value of land being sold by him to a Government department or public or local authority, and the sale of the land to the department or authority at the price so certified shall be deemed to be a sale at the best price that can reasonably be obtained.

Certificates of value of official arbitrators.

10.—(1) The provisions of this Act shall not apply to any purchase of the whole or any part of any statutory undertaking under any statutory provisions in that behalf prescribing the terms on which the purchase is to be effected.

Saving for statutory purchases of statutory undertakings.

(2) For the purposes of this section, the expression "statutory undertaking" means an undertaking established by Act of Parliament or order having the force of an Act, and the expression "statutory provisions" includes the provisions of an order having the force of an Act.

11. [Application to Scotland and Ireland.]

12.—(1) This Act may be cited as the Acquisition of Land (Assessment of Compensation) Act, 1919, and shall come into operation on the first day of September nineteen hundred and nineteen, but shall not apply to the determination of any question where before that date the appointment of an arbitration, valuation, or other tribunal to determine the question has been completed, or a jury has been empanelled for the purpose.

Short title, commencement and interpretation.

Section 12. (2) For the purposes of this Act, the expression "land" includes water and any interests in land or water and any easement or right in, to, or over land or water (a), and "public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking (b).

Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

(a) *E.g.* the compensation to be paid for the laying of a sewer or water main through land must now be determined under the machinery provided by this Act (*Thurrock, Grays & Tilbury Joint Sewerage Board v. Thames Land Co.* (1925), 90 J. P. 1; 23 L. G. R. 648; Digest Supp.).

(b) The Metropolitan Water Board is a "public authority" within this definition since although trading it does not trade for profit (*Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299; 18 L. G. R. 766).

THE LAND SETTLEMENT (FACILITIES) ACT, 1919.

(9 & 10 Geo. 5, c. 59.)

An Act to make further provision for the acquisition of land for the purposes of small holdings, reclamation, and drainage, to amend the enactments relating to small holdings and allotments, and otherwise to facilitate land settlement. [19th August 1919.]

Notwithstanding the title of this Act, it is really one of the group of Acts dealing with small holdings and allotments. See s. 34, *post*. These Acts comprise the Small Holdings and Allotments Act, 1908, *ante*, p. 5067; the Small Holdings Act, 1910; the Allotments Act, 1922; the Allotments Act, 1925; the Small Holdings and Allotments Act, 1926, Vol. V. and 1 Halsbury's Statutes 303, 317, 322, and Part II. of the Agricultural Land (Utilisation) Act, 1931, Vol. V. and 24 Halsbury's Statutes 53. By the Land Settlement (Facilities) Amendment Act, 1925 (1 Halsbury's Statutes 322), an entirely new provision was substituted for s. 27 of the Act in the text. This substituted section is set out in the text in place of the original section and the Act of 1925 is not printed since apart from this section, the only other section contained in the Act was that giving the short title.

Throughout the Act "Minister" has been substituted for "Board" in reference to the Minister of Agriculture and Fisheries in consequence of Ministry of Agriculture and Fisheries Act, 1919 (3 Halsbury's Statutes 451).

PART I.

PROVISIONS AS TO THE ACQUISITION OF LAND.

1. . . .

This section which was of temporary effect only was repealed by the Small Holdings and Allotments Act, 1926, s. 22 and Sched. II., Vol. V. and 1 Halsbury's Statutes 333, 335. See now *ibid.*, s. 17, Vol. V. and 1 Halsbury's Statutes 331.

2.—(1) Where an order for the compulsory purchase of land has been made, and where necessary confirmed, under the principal Act, whether such order was made before or after the passing of this Act, the council entitled to purchase the land under the order may, at any time after a notice to treat has been served, and on giving not less than fourteen days' notice to each owner, lessee and occupier of the land, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845 (a), but subject to the payment of the like compensation for the land of which possession is taken and interest thereon as would have been payable if the provisions of those sections had been complied with :

Provided that, where a council have so entered on land, the council shall not be entitled to exercise the powers conferred by subsection (8) of section thirty-nine of the principal Act (b).

(2) Where a council have agreed, for the purposes of the principal Act,

Temporary suspension of requirements as to confirmation of orders for the acquisition of land. Power of entry on land.

s. & 9 Vict. c. 18.

to purchase land subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year, or from year to year, then at any time after such agreement has been made the council may, after giving not less than fourteen days' notice to the person so in possession, enter on and take possession of the land or of such part thereof as is specified in the notice without previous consent, but subject to the payment to the person so in possession of the like compensation for the land of which possession is taken, with such interest thereon as aforesaid, as if the council had been authorised to purchase the land compulsorily and such person had, in pursuance of such power, been required to quit possession before the expiration of his term or interest in the land, but without the necessity of compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845 (a).

Section 2.

(3) Where a notice of entry under this section relates to land on which there is a dwelling-house and the length of notice is less than three calendar months, the occupier of the dwelling-house may, by notice served on the council within ten days after the service on him of the notice of entry, appeal against such notice, and in any such case the appeal shall be determined by an arbitrator under and in accordance with the provisions of the Second Schedule of the Agricultural Holdings Act, 1908 (except that the arbitrator shall, in default of agreement, be appointed by the President of the Surveyors' Institution) (c), and the council shall not be entitled to enter on the land under this section except on such date and on such conditions as the arbitrator may award.

(4) This section shall with such necessary adaptations as may be prescribed apply in the case of an order authorising the compulsory hiring of land, or of an agreement to hire land (d).

As to the purchase and hiring of land for purposes of the principal Act, see s. 39 and Sched. I. thereof, *ante*, pp. 5075, 5088, as amended by s. 17 of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 331.

(a) See the sections referred to, *ante*, pp. 4135-4138. See also the Small Holdings and Allotments (Compulsory Purchase) Regulations, 1936, *ante*, p. 3154.

(b) See this sub-section, *ante*, p. 5076. It enables the council in certain circumstances to withdraw a notice to treat; this cannot be done where entry has been made under this section.

(c) Under the Act referred to, the arbitrator is nominated by the Minister.

(d) See the Small Holdings and Allotments (Compulsory Hiring) Regulations, 1936, *ante*, p. 3157.

3. . . .

Sections 3, 4, and 5 were repealed by the Expiring Laws Act, 1922, s. 2 (18 Halsbury's Statutes 1179).

* * * * *

6. In any case of acquisition of land by the [Minister] of Agriculture and Fisheries under this Act, subsection (5) of section one of the Small Holding Colonies Act, 1916 (which relates to compensation to labourers), shall apply with the substitution of references to this Act for references to that Act.

The Minister had power to acquire land for small holdings under s. 20 of the principal Act. This section was, however, repealed by the 1926 Act, Vol. V. and 1 Halsbury's Statutes 322 and there is no corresponding provision under that Act.

7. Where under the principal Act or the Small Holding Colonies Acts, 1916 and 1918, the [Minister] of Agriculture and Fisheries or a council have power to purchase land in consideration of a fee farm rent [or terminable rentcharge] the [Minister] or council shall have power and shall be deemed always to have had power to covenant to pay the rent [or rentcharge] as and when it becomes due.

Power to
covenant to pay
rentcharges.

**Note to
Section 7.**

As to the purchase of land at a fee farm rent or terminable rentcharge, see s. 57 of the Settled Land Act, 1925 (17 Halsbury's Statutes 893) (see note (c), *ante*, p. 5078). See also s. 10 of the 1922 Act, Vol. V., *post*.

Words in brackets were inserted by s. 21 and Sched. I. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 334.

Sales of glebe.

8. For the purpose of a sale of land under the Ecclesiastical Leasing Acts to a council or to the [Minister] of Agriculture and Fisheries for the purposes of the principal Act or the Small Holding Colonies Acts, 1916 and 1918, the consent of the patron to the sale shall not be necessary.

PART II.

AMENDMENT OF THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908.

Power to sell
and acquire
land for
annuity.

9.—(1) Any person having power (whether subject to any consent or conditions or not) to sell land authorised to be acquired by a county council under the principal Act may, subject to the like consent and conditions, sell the land to the council in consideration, wholly or partially, of a perpetual annuity under this section payable by the council.

(2) Where the vendor of the land sold in consideration for an annuity is not absolutely entitled for his own benefit to the land sold, the annuity shall be treated as if the land had been sold for a capital sum and that sum invested in the purchase of the annuity.

(3) Subject to the provisions of this section, the council liable for the payment of an annuity under this section may at any time redeem the annuity.

The council shall in each case give to the annuitant one month's notice of their intention to redeem the annuity, and shall pay to him as consideration for the redemption such sum as may be agreed, or in default of agreement such sum as would, according to the average price at the date of the expiration of the notice of such Government securities as may for the time being be prescribed by the Treasury, yield annual dividends equal to the amount of the annuity.

The redemption of an annuity under this section shall be deemed to be a purpose for which a council may borrow under the principal Act.

(4) The power to sell land in consideration of an annuity under this section shall apply to land belonging to His Majesty in right of the Crown or of the Duchy of Lancaster and to land belonging to the Duchy of Cornwall.

(5) The provisions set out in the First Schedule to this Act shall have effect with respect to annuities under this section.

10. . . .

This section was of temporary effect only and was repealed by s. 22 and Sched. II. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 335.

Amendment of
principal Act as
respects power
to acquire land
for small hold-
ings.

Duties of
county councils
with respect to
sale or lease of
land.

11.—(1) Land acquired by a county council under the principal Act shall *be sold or let by the council at the best price or sum that can reasonably be obtained, and*, where sold or let for small holdings, be sold or let, except where the [Minister] of Agriculture and Fisheries for any special reason otherwise direct, subject to a reservation of all minerals vested in the council.

(2)

(3) A tenant of a holding provided by a county council on land purchased by the council, who has been in occupation thereof for a period of not less than six years, shall, on notice of his desire to purchase the holding being given to the council at any time before the tenant has received notice to quit the holding, be entitled to require the sale to him of the holding at the expiration of [six months] from the date of the notice at the then value of the holding, exclusive of any increase of the value thereof due to any improvement executed thereon by and at the expense of the tenant, and thereupon

the council shall sell the holding to the tenant accordingly unless the council obtain the consent of the [Minister] of Agriculture and Fisheries to the requirements of the tenant being refused by the council. **Section 11.**

(4) The value of the holding shall in default of agreement be determined by arbitration under and in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act, 1908.

Words in italics were repealed by s. 22 and Sched. II. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 335, as were also sub-ss. (2), (5), (6) and (7) of this section.

The words in brackets were substituted for "one month" by s. 21 and Sched. I., *ibid.*, Vol. V. and 1 Halsbury's Statutes 333, 335.

Sub-s. (3) of this section applies only to the case of tenants in occupation of small holdings on December 15th, 1926.

In the case of tenants who have gone into occupation since that date the provisions of the 1926 Act apply (s. 19, *ibid.*, Vol. V. and 1 Halsbury's Statutes 332).

12.—(1) Subject to the consent of the [Ministry] of Agriculture and Fisheries in cases where their consent is required under this section or under regulations made by the [Ministry], a county council shall have power in any case where in the opinion of the council it is necessary or expedient so to do for the better carrying into effect of the principal Act—

(a) to erect, repair, or improve dwelling houses and other buildings on any land acquired by the council under the principal Act, or to execute any other improvement on or in connection with and for the benefit of any such land, or to arrange with the tenant of any such land for the execution of any such improvement of such terms as may be agreed :

(b) to sell, mortgage, exchange, or let any such land or any interest therein, subject, in the case of any sale, mortgage, or exchange, to the consent of the [Minister], and in the case of a mortgage subject also to the consent of the [Minister of Health] (a):

(c) in a case where no power of appropriation is otherwise provided, with the consent of the [Minister] and the [Minister of Health] and subject to such conditions as to the repayment of any loan made for the purpose of the acquisition of the land or otherwise as the last-mentioned [Minister] may impose—

(i) to appropriate for any purpose for which the council is authorised to acquire land under the principal Act any land held by the council for other purposes of the council ; or

(ii) to appropriate for other purposes of the council land acquired by the council under the principal Act (a):

(d) generally to manage any land acquired by the council under the principal Act.

(2) . . .

(3) The provisions of the Lands'Clauses (Consolidation) Act, 1845, with s & 9 Vict. c. 18. respect to the sale of superfluous land, shall not apply to land acquired by a council under the principal Act.

Sub-section (2) of this section was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Notwithstanding the provisions of this section, the consent of the Minister will not be required for the sale of any land acquired under Part I. of the 1926 Act without his consent (s. 20 (1), *ibid.* ; Vol. V. and 1 Halsbury's Statutes 333).

The powers of appropriation conferred by this section constitute an exception to the general rule that land acquired for a given purpose may not be used for any other purpose. See notes to s. 163 (1) of the L. G. A., 1933, *ante*, p. 989. Further powers of appropriation are given by s. 22, *post*, p. 5225. See also the further restriction on the appropriation of land in s. 28, *post*, p. 5229.

The provisions of the Lands Clauses Act referred to are contained in s. 127 of the Act of 1845 (2 Halsbury's Statutes 1158).

(a) These two paragraphs are excluded from application to the Agricultural Land (Utilisation) Act, 1931, by s. 10, *ibid.*, Vol. V., *post*.

Section 13.

Removal of
necessity for
consent of
[Minister] after
a certain period.

13. Notwithstanding any provision in the principal Act, the consent of the [Minister] of Agriculture and Fisheries shall not, *after the thirty-first day of March, nineteen hundred and twenty-six*, be required for the acquisition, sale, mortgage, exchange, letting, improvement, or management of land by a county council under the principal Act, except in cases where such consent is required by some enactment other than the principal Act.

Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183). This section will not exempt a county council from obtaining the consent of the Minister where such consent is required under the 1926 Act (s. 20 (2), *ibid.*; Vol. V. and 1 Halsbury's Statutes 333).

Extension of
term of loans.

14.—(1) The Public Works Loan Commissioners may lend to a county council any money which the council are authorised to borrow under the principal Act on such terms and conditions as the Treasury may prescribe.

(2) . . .

38 & 39 Vict.
c. 89.

(3) After the expiration of the said two years any loans so made by the Public Works Loan Commissioners shall be made from the Local Loans Fund in manner provided by the Public Works Loans Act, 1875 (a), as modified by subsection (2) of section fifty-two of the principal Act (b).

(4) . . .

(5) *This section shall be deemed to have had effect as from the first day of April, nineteen hundred and nineteen.*

Sub-section (2) and part of sub-s. (3) which were of temporary effect only and sub-s. (5) were repealed by S. L. R. A., 1927. Sub-s. (4) was repealed by the L. G. A., 1933.

(a) This Act is set out in full, *ante*, p. 4544.

(b) See the section referred to, *ante*, p. 5084.

15. . . .

This section which was of temporary effect only was repealed by S. L. R. A., 1927.

Consent of
[Minister] to
period of
borrowing by
county councils.
Amendment of
section 41 of
principal Act.

16.—(1) An order under the principal Act may, notwithstanding anything in section forty-one thereof, authorise the compulsory acquisition—

(a) of any land which at the date of the order forms part of any park or of any home farm attached to and usually occupied with a mansion house, if the land is not required for the amenity or convenience of the mansion house; or

(b) of a holding of fifty acres or less in extent or any part of such a holding.

(2) Where it is proposed to acquire any land forming part of a park or any such home farm, or, except where required for purposes of allotments, a holding of fifty acres or less in extent or of an annual value not exceeding [one hundred] pounds for the purposes of income tax, or any part of such a holding, the order authorising the acquisition of the land shall not be valid unless confirmed or made by the [Minister] of Agriculture and Fisheries.

(3) A holding to which the preceding subsection applies shall not in whole or in part be compulsorily acquired under the principal Act by the [Minister] or a council where it is shown to the satisfaction of the [Minister] or the council, as the case may be, that the holding is the principal means of livelihood of the occupier thereof, except where the occupier is a tenant and consents to the acquisition.

This section amends s. 41 of the principal Act, *ante*, p. 5078, which contains certain restrictions on the acquisition of land which are partly removed by the provision in the text. See also s. 8 of the 1922 Act, Vol. V., *post*.

The words in brackets were substituted for "fifty" by s. 21 and Sched. I. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 334, and the words in italics were repealed by s. 22 and Sched. II., *ibid.*, Vol. V. and 1 Halsbury's Statutes 333, 335.

Power of county
council to
acquire land for
letting to parish

17. A county council may acquire land for the purpose of leasing it to the council of a parish within the county for the provision of allotments, and the provisions of the principal Act relating to the acquisition, and to pro-

ceedings in relation to the acquisition, of land for the purpose of providing small holdings shall apply to such acquisition as if the land were to be acquired for the provision of small holdings. **Section 17.**

18. . . .

This section was repealed by s. 22 and Sched. II. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 335.

council for allotments.
Power to advance money to certain tenants of small holdings for purchase of stock, etc.
Power of entry to inspect land.

19. A council, with a view to ascertaining whether any land is suitable for any purpose for which the council has power to acquire land under the principal Act, may by writing in that behalf authorise any person (upon production, if so required, of his authority), to enter and inspect the land specified in the authority, and any one who obstructs or impedes any person acting under and in accordance with any such authority shall be liable on summary conviction to a fine not exceeding twenty pounds.

The power of entry conferred by this section is for purposes of inspection only. It must not be confused with the power of entry given by s. 2, *ante*, p. 5220.

20. . . .

This section was repealed by s. 22 and Sched. II. of the 1926 Act

Provisions as to small holdings of less than one acre.

21.—(1) The council of any borough, urban district or parish may purchase any fruit trees, seeds, plants, fertilisers or implements required for the purposes of allotments cultivated as gardens, whether provided by the council or otherwise, and sell any article so purchased to the cultivators, or, in the case of implements, allow their use, at a price or charge sufficient to cover the cost of purchase (a).

Provisions as to allotments.

(2) The powers conferred by the preceding subsection shall be exercisable by a council only where in the opinion of the council the facilities for the purchase or hire of the articles therein referred to from a society on a co-operative basis are inadequate.

(3) Rules made by a council under section twenty-eight of the principal Act shall, unless otherwise expressly provided, apply to an allotment, though held under a tenancy made before the rules come into operation (b).

(4) (c).

(5) Stamp duty shall not be payable on any lease or agreement for the letting of any allotment or garden, whether provided under the principal Act or otherwise, or on any duplicate or counterpart of any such lease or agreement where the rent does not exceed ten shillings per annum and no premium is paid.

(a) The Minister may make grants to assist in providing seeds, fertilisers and equipment for unemployed persons (Agricultural Land (Utilisation) Act, 1931, s. 16, Vol. V. and 24 Halsbury's Statutes 62).

(b) See the section referred to and the notes thereon, *ante*, p. 5071.

(c) This sub-section was repealed by the Act of 1922. A slightly different provision is made by s. 19 of that Act, Vol. V. and 1 Halsbury's Statutes 314.

22.—(1) A council of a borough, urban district, or parish may, in a case where no power of appropriation is otherwise provided, with the consent of the [Minister] of Agriculture and Fisheries and the [Minister of Health], and subject to such conditions as to the repayment of any loan obtained for the purpose of the acquisition of land or otherwise as the last-mentioned [Minister] may impose,—

Power of appropriation of land.

(a) appropriate for the purpose of allotments any land held by the council for other purposes of the council; or

(b) appropriate for other purposes of the council land acquired by the council for allotments.

Section 22. (2) This section shall apply, in the county of London, to the council of the county and to any metropolitan borough council.

See as to appropriation the note to s. 12, *ante*, p. 5223.

The powers of this section are saved by the L. G. A., 1933, s. 179, Sched. VII., *ante*, pp. 1005, 1264.

Agreements as to compensation where land is let for provision of allotments.

23. Where land is let for the provision of allotments either to a council under the principal Act or to an association formed for the purpose of creating or promoting the creation of allotments, the right of the council or association to claim compensation from the landlord on the determination of the tenancy shall be subject to the terms of the contract of tenancy, notwithstanding the provision of any Act to the contrary:

Provided that this section shall not prejudice or affect any right on the part of a person holding under a tenancy granted by the council or association to claim compensation from the council or association on the determination of his tenancy.

Power of metropolitan boroughs as to allotments.

24. The powers as to allotments conferred on borough councils by the principal Act may be exercised by a metropolitan borough council. . . .

Minor amendments of principal Act.

25.—(1) The provisions of the principal Act specified in the first column of the Second Schedule to this Act shall be amended in the manner specified in the second column of that schedule.

(2) *Subsection (2) of section twenty-seven of the principal Act is hereby repealed.*

Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183)

PART III.

RECOUPMENT OF LOSSES INCURRED BY COUNCILS.

Recoupment of losses incurred in exercise of powers under principal Act.

26. . . .

This section was repealed by s. 22 and Sched. II. of the 1926 Act, Vol. V. and 1 Halsbury's Statutes 333, 335. See now s. 2, *ibid.*, Vol. V. and 1 Halsbury's Statutes 323.

Recoupment of capital losses.

27.—(1) For the purpose of this section there shall be ascertained—

- (a) the amount of the charges which will fall to be met (a) in the half-year beginning on the appointed day (a) and every subsequent half-year (b) by any council (b) in respect of expenditure properly incurred (b) by them before the appointed day in respect of the acquisition, adaptation or improvement of, or otherwise in relation to, their small holdings estate (b) (in this section referred to as "small holdings charges"); and
- (b) the net income (c) which will accrue in the year beginning on the appointed day (b) and in every subsequent year (b) to the council (b) from the council's small holdings estate (b).
- (2) The amount of a small holdings charge falling to be met in any half-year (b) shall, for the purpose of this section, be taken to be—
 - (a) in the case of a tithe redemption annuity or any perpetual or terminable rentcharge created on the acquisition of land (d), one-half of the amount payable in the year (b) in respect thereof;
 - (b) in the case of an annuity issued under section nine of this Act (e), one-half of the amount of the annuity, together with one-half of the amount which the council (b) is directed to set apart in the year (b) to form a sinking fund for the discharge of the annuity;
 - (c) in the case of a mortgage repayable by payments of principal and interest combined, or by equal yearly or half-yearly instalments of principal together with interest on the balance of the principal sum

for the time being outstanding, one-half of the aggregate of the amounts so payable in the year (b); Section 27.

- (d) in the case of any other mortgage or charge, such amount as is agreed between the Minister and the council (b) concerned to be payable in that half-year (b) as interest thereon, together with one-half of the amount which the council is required to set apart in the year (b) to form a sinking fund for the discharge of the principal sum.

(3) For the purpose of ascertaining the net annual income of the council's small holdings estate (b) for any year (b), the net annual income of land forming part of that estate shall be taken to be—

- (a) in the case of land other than leasehold land, the amount representing the estimated average yearly rent obtainable by the council for the land after deducting therefrom the estimated cost of repairs, insurance, expenses of management and other outgoings reasonably necessary to secure that rent, but without deducting any small holdings charges (f) or income tax;

- (b) in the case of leasehold land, the difference between the estimated average yearly rent obtainable by the council (b) for the land and the estimated annual expenditure of the council on account of rent and other necessary outgoings in connection with the land, including any amounts required to meet the estimated net liability of the council to the landlord or to the tenants of the council on the expiration of the current tenancy:

Provided that—

- (i) if the amount of the estimated average yearly rent is less than the amount of the estimated annual expenditure, the deficiency shall be brought into account; and

- (ii) no rent shall be deemed to be obtainable by the council in respect of the land after the expiration of the current tenancy of the council.

(4) Where before the appointed day (b) a council (b) has properly incurred (b) any expenditure in respect of the acquisition, adaptation or improvement of, or otherwise in relation to, their small holdings estate (b), but has not obtained a loan under the principal Act in respect of that expenditure, or where a council after the appointed day (b) has incurred any such expenditure in respect of which the approval of the Minister was given before the appointed day, there shall be ascertained, on the basis of the foregoing provisions of this section, the amount representing the half-yearly charges which would have become payable by the council if the amount of the expenditure had been raised by loan, and the amount so ascertained shall, for the purpose of this section, be treated as if it were a small holdings charge.

(5) The Minister shall, on such date as may be agreed between him and the council (b), pay to every council in respect of each half-year (b) a sum equal to the amount, if any, by which the aggregate amount of the small holdings charges payable by the council during that half-year exceeds one-half of the net annual income of the council's small holdings estate for the year ascertained as aforesaid:

Provided that, as regards the payments to be made in respect of the financial year ending on the thirty-first day of March, nineteen hundred and twenty-seven, and in respect of each of the two next following years, the date to be agreed as aforesaid shall be a date not earlier than the first day of the financial year following the year in respect of which the payment is to be made.

Any sum paid to a council under this sub-section may be applied by the council in defraying any expenditure in connection with the council's small holdings estate.

Section 27. (6) There shall also be ascertained the amount of the loss which a council will necessarily or without any unreasonable default on its part incur in respect of—

- (a) any advance made or guaranteed before the appointed day by the council under section eighteen of this Act (g); and
- (b) any arrears of rent due or accruing to the council on the appointed day from any person who is or was a tenant of land acquired by the council under the principal Act and of any other liabilities of such a tenant to the council remaining undischarged on the appointed day, and the aggregate of the amounts so ascertained shall be paid to the council by the Minister in four equal annual instalments, the first of which shall be made on the appointed day (b) or as soon thereafter as the loss is ascertained, and the remainder of which shall be made on each succeeding first day of April.

(7) If any question arises between the Minister and a council with respect to any matter to be ascertained under this section, that question shall be determined by arbitration in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act, 1923, except that—

13 & 14
Geo. 5, c. 9.

- (a) in default of agreement, the arbitrator shall be appointed by the Reference Committee for England and Wales constituted under section one of the Acquisition of Land (Assessment of Compensation) Act, 1919 (h), and may be a person who is not a member of the panel formed under the said Second Schedule, and for the purposes of this provision the Reference Committee shall be deemed to include the President of the Institute of Chartered Accountants in England and Wales as well as the persons mentioned in the said section one; and
- (b) the Minister and the council shall each bear their own costs and pay the costs of the award in equal shares.

9 & 10
Geo. 5, c. 57.

(8) For the purposes of this section unless the context otherwise requires—

“The council’s small holdings estate” means the land acquired by a council under the principal Act and vested in them on the appointed day, other than any land acquired by them when acting in default of a district or parish council (j) or any small holdings of less than one acre (k);

“Rent” means, in the case of land capable of being let for the purposes of small holdings or allotments, the amount which would be obtainable as rent if the land were let for those purposes;

“Council” means the council of a county (l);

“Year” means the year beginning on the first day of April, and “half-year” means the period beginning on the first day of April or the first day of October in any year;

“Current” in relation to a tenancy means current until the first day after the appointed day on which the tenancy might be terminated by the landlord and no longer;

“The appointed day” means the first day of April, nineteen hundred and twenty-six;

Expenditure shall not be treated as having been properly incurred if, being expenditure for which the approval of the Minister was by law required, such approval was not given.

(9) The provisions of this section shall apply to the council of a county borough in respect of land acquired by the council for the purposes of small holdings in like manner as it applies to the council of a county.

(10) Amounts required to be ascertained for the purposes of this section may be so ascertained before the appointed day, and if not so ascertained shall be so ascertained as soon as possible thereafter

(11) When any amount has once been ascertained in accordance with the provisions of this section, it shall not thereafter be subject to revision or variation.] Section 27.

This section was substituted by the Land Settlement (Facilities) Amendment Act, 1925 (1 Halsbury's Statutes 322). See the headnote to this Act at p. 5220, *ante*.

(a) As to certain items which are to fall under this head, see sub-s. (2). As to disputes between a council and the Minister as to the inclusion or exclusion of any item, etc., see sub-s. (7).

(b) See the definition in sub-s. (8).

(c) As to the ascertainment of "net income," see sub-s. (3).

(d) See s. 7 and notes thereto, *ante*, p. 5221.

(e) See this section at p. 5222, *ante*.

(f) As to what are "small holdings charges," see sub-s. (1) (a).

(g) This section was repealed by the 1926 Act, Vol. V. and 1 Halsbury's Statutes 322.

(h) See this Act set out, *ante*, p. 5213.

(i) *I.e.* for allotments under s. 24 of the 1908 Act, *ante*, p. 5068.

(k) Power to provide small holdings of less than one acre was given by s. 20 of this Act. But that section was repealed by the Act of 1926.

(l) "Or county borough," so far as small holdings are concerned (see sub-s. (9)).

PART IV.

GENERAL.

28.—(1) Any land which is, or forms part of, a metropolitan common within the meaning of the Metropolitan Commons Act, 1866, or which is subject to regulation under an order or scheme made in pursuance of the Inclosure Acts, 1845 to 1899, or under any local Act or otherwise, or which is or forms part of any town or village green, or of any area dedicated or appropriated as a public park, garden, or pleasure ground, or for use for the purposes of public recreation, shall not be appropriated under this Act by a council for small holdings or allotments, and shall not be acquired by a council or by the [Minister] of Agriculture and Fisheries under the principal Act except under the authority of an order for compulsory purchase made under the principal Act, which so far as it relates to such land shall be provisional only, and shall not have effect unless it is confirmed by Parliament (a). Provisions as to commons and open spaces. 29 & 30 Vict. c. 122.

(2) The [Minister] of Agriculture and Fisheries, in giving or withholding [his] consent under this Act to the appropriation and in confirming an order for compulsory acquisition by a council for the purpose of small holdings or allotments of any land which forms part of any common, and in the exercise by the [Minister] of [his] powers of acquiring land under this Act, shall have regard to the same considerations and shall hold the same inquiries as are directed by the Commons Act, 1876 (b), to be taken into consideration and held by the [Minister] before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not. Any consent by the [Minister] of Agriculture and Fisheries for the appropriation of land forming part of any common for the purpose of small holdings or allotments shall be laid before Parliament while Parliament is sitting, and, if within twenty-one days in either House of Parliament a motion is carried dissenting from such appropriation, the order of the [Minister] shall be cancelled. 39 & 40 Vict. c. 56.

(3) Where an order for compulsory purchase to which this section applies or a consent by the [Minister] to the appropriation of land provides for giving other land in exchange for the common or open space to be purchased or

Section 28. appropriated, the order for compulsory purchase or an order made by the [Minister] in relation to the consent for appropriation may vest the land given in exchange in the persons in whom the common or open space purchased or appropriated was vested subject to the same rights, trusts, and incidents as attached to the common or open space and discharges the land purchased or appropriated from all rights, trusts, and incidents to which it was previously subject.

7 Edw. 7,
c. cxxxvi.
Local and
Private.

(4) Nothing in the principal Act shall be deemed to authorise the acquisition of any land which forms part of the trust property to which the National Trust Act, 1907, applies.

(a) As to provisional orders, see the Public Health Act, 1875, s. 297, *ante*, p. 4507.

(b) See this Act, *ante*, p. 4563.

Amendment of
Settled Land
Acts, 1882 to
1890.

29. . . .

This section was repealed by the Settled Land Act, 1925. See now s. 57 of that Act (17 Halsbury's Statutes 893).

Provisions as to
land taken
under the
Defence of the
Realm Regula-
tions.

30. . . .

This section was of temporary effect only and was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Expenses.

31. The expenses of the [Minister] of Agriculture and Fisheries under this Act to such extent as may be sanctioned by the Treasury shall, except so far as is otherwise expressly provided, if incurred for the purposes of Part I. of this Act, be defrayed out of moneys provided by Parliament, and if incurred for the purposes of any other Part of this Act be defrayed out of the Small Holdings Account.

Now the small holdings and allotments account, see s. 51 of the Act of 1908, *ante*, p. 5083.

Construction.

32.—(1) This Act, so far as it amends the principal Act, shall be construed as one with that Act, and references in this Act to the principal Act, or to any provision of the principal Act, shall, where the context permits, be construed as references to the principal Act, or the provisions of the principal Act as amended by this Act.

(2) References to small holdings provided, and to land acquired, under the principal Act shall be construed as including references to small holdings provided and land acquired under any enactment repealed by the principal Act.

As to the effect of this Act being construed as one with the principal Act, see note (b) to s. 14 of the Midwives Act, 1926, *ante*, p. 1555.

Repeal.

33. *The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.*

This section and the Schedule referred to therein were repealed by S. L. R. A., 1927.

Short title.
8 Edw. 7, c. 36.
10 Edw. 7, & 1
Geo. 5, c. 34.

34. This Act may be cited as the Land Settlement (Facilities) Act, 1919, and the Small Holdings and Allotments Acts, 1908 and 1910, and so much of this Act as amends those Acts may be cited together as the Small Holdings and Allotments Acts, 1908 to 1919.

Schedule 1.

SCHEDULES.

FIRST SCHEDULE.

Section 9.

1. Every annuity shall be charged on and payable out of the county fund or borough fund or rate, as the case may be, of the county or borough by the council of which the annuity is payable.

2. The council shall issue a certificate of the annuity to the person entitled thereto (in this schedule referred to as "the annuitant"), and for the purposes of this provision the person who could, if the land had been disposed of for cash, have given a good discharge for the purchase money, shall be deemed to be the person entitled to the annuity.

If any question arises as to the person to whom a certificate ought to be issued, that question shall be referred to and decided by the [Minister] of Agriculture and Fisheries, whose decision shall be final and conclusive.

3. If in any case the [Ministry] think it desirable so to do for the purpose of protecting the interests of persons entitled to any mortgage, charge, or other incumbrance on an annuity, they may direct that the certificate to be issued in respect of the annuity shall be issued to and held by such persons as they appoint to be trustees for the purpose, and the persons so appointed shall, subject to the provisions of any regulations made under this schedule, be deemed to be the persons entitled to the annuity.

4. Any annuity may be divided at the option of the annuitant into two or more annuities of any amount not being less than one pound, and any annuities whether sub-divided or not may be consolidated with other annuities payable by the same council as the annuitant may direct.

5. An annuity shall be payable by equal half-yearly payments on the thirty-first day of March and thirtieth day of September in every year, and the first half-yearly payment in respect of the annuity, or, if a full half-yearly payment has not then accrued due, payment of a proportionate part of the annuity, shall be made on the half-yearly day which occurs next after the date on which the land in respect of which the annuity is issued is acquired.

6. The council shall deliver to the annuitant or send to him by post a warrant or order on the county or borough treasurer, as the case may be, for every payment due to him.

7. An annuity shall be included among the securities upon which a trustee may invest under the Trustee Act, 1893 (a).

8. If within thirty days after a payment in respect of an annuity becomes due the payment is not made, the annuitant may recover the amount thereof against the council in any court of competent jurisdiction.

9. The annuitants, without prejudice to other remedies, may enforce payment of arrears of their annuities by the appointment of a receiver as though each annuity was interest on a mortgage granted to them by the council under the Local Government Act, 1888, or the Public Health Act, 1875, as the case may be.

10. The [Minister of Health] may make regulations with respect to the keeping by a council of a register of annuitants, and with respect to the transfer and transmission of annuities, and with respect to the redemption of annuities, and the creation of a sinking fund by councils for that purpose, and the [Minister] of Agriculture and Fisheries may make regulations for the purpose of otherwise carrying the provisions of this Schedule into effect.

11. No notice of any trust expressed, implied or constructive shall be receivable by a council in respect of an annuity, and no entry with respect to any such trust shall be made in any register of annuitants.

(a) The Trustee Act, 1893, is now repealed, see the Trustee Act, 1925, Vol. V., *post*.

Schedule 2.

Section 25.

SECOND SCHEDULE.

MINOR AMENDMENTS OF PRINCIPAL ACT.

Provision of the Principal Act to be amended.	Amendment.
Section 9 - - -	In paragraph (b) of subsection (2) after the word "let" there shall be inserted the words "or sell."
Section 23 - - -	In subsection (1) the words "for the labouring population" and "belonging to the labouring population" and the words from "and that such allotments cannot" to "applicants for the same" shall be omitted. Subsection (3) shall be omitted.
Section 24 - - -	In subsection (1) after the word "allotments" there shall be added the words "by any person or by an association to which allotments may be let under this Act," and the words "(other than boroughs)" shall be omitted.
	In subsection (4) the words "other than a borough" shall be omitted.
Section 27 - - -	In subsection (1) after the words "quarter's rent" there shall be added the words "(except where the yearly rent is twenty shillings or less)."
	At the end of subsection (4) there shall be inserted the words "except with the consent of the council."
	In subsection (6) after the words "system or" there shall be inserted the words "of letting or selling."
Section 34 - - -	In subsection (1) the word "labouring" shall be omitted.
Section 42 - - -	In subsection (1) for the words "attaching to small holdings or allotments provided by the council" there shall be substituted the words "letting to tenants of small holdings and allotments," and in subsection (2) for the words "attached to the" there shall be substituted the words "let to tenants of."
Section 43 - - -	For the word "may" there shall be substituted the word "shall."
Section 46 - - -	In subsection (1) after the word "do" there shall be inserted the words "or such shorter notice as may be required by the order for the compulsory hiring of the land."
Section 47 - - -	In subsection (2) for the words "subject in the case of land hired by agreement to any agreement to the contrary" there shall be substituted the words "subject to any provision to the contrary in the agreement or order for hiring."
Section 49 - - -	In subsection (1) and subsection (2) after the word "county" in both places where it occurs there shall be inserted the words "or borough or urban district."
	In subsection (3) the words "under the provisions of this Act" shall be omitted.
Section 53 - - -	In subsection (4) after the words "adapting land for allotments" there shall be inserted the words "and the council of a borough or urban district may borrow for the purpose of grants or advances to a co-operative society."
Section 58 - - -	In subsection (1) the word "(England)" shall be omitted.
Schedule I., Part II. - -	In paragraph (2) (b) after the word "holdings" there shall be added the words "or allotments as the case may be."
	In paragraph (6) after the word "expenses" there shall be added the words "as the council shall consider or."

THIRD SCHEDULE.

Section 33.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
8 Edw. 7, c. 36 -	<i>The Small Holdings and Allotments Act, 1908.</i>	Subsection (3) of section four; subsection (4) of section six; subsection (3) of section seven; section eight; subsections (1) and (3) of section nine; section sixteen; section twenty-one; in section twenty-three the words "for the labouring population" and "belonging to the labouring population" and the words from "and that such allotments cannot" to "applicants for the same" and subsection (3); in section twenty-four the words "other than boroughs" and "other than a borough"; subsection (2) of section twenty-seven; section thirty-one; subsection (3) of section thirty-two; in section thirty-four the word "labouring"; subsection (3) of section forty-one; in subsection (3) of section forty-nine the words "under the provisions of this Act" and in section fifty-eight the word "(England)."
6 & 7 Geo. 5, c. 38.	<i>The Small Holding Colonies Act, 1916.</i>	In section one the words "during the continuance of the present war and a period of twelve months thereafter."
8 & 9 Geo. 5, c. 26.	<i>The Small Holding Colonies (Amendment) Act, 1918.</i>	Section one from "Provided that" to "the same in feu."

This schedule was repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

THE RATS AND MICE (DESTRUCTION) ACT, 1919.

(9 & 10 GEO. 5, c. 72.)

An Act to make further provision for the Destruction of Rats and Mice.

[23rd December, 1919.]

1. Any person who shall fail to take such steps as may from time to time be necessary and reasonably practicable for the destruction of rats and mice on or in any land of which he is the occupier, or for preventing such land from becoming infested with rats or mice, shall be liable on summary conviction to a fine not exceeding five pounds, or, where he has been served with a notice under this Act requiring him to take such steps, not exceeding twenty pounds. Penalty for failure to destroy rats and mice.

"Person" includes a corporation (Interpretation Act, 1889, s. 19; 18 Halsbury's Statutes 1001).

For definitions of "land" and "occupier," see s. 8, *post*, p. 5236.

As to prosecutions, see s. 7, *post*, p. 5235.

Section 2.

Enforcement
of Act.

2.—(1) The following local authorities shall execute and enforce this Act ; that is to say,—

- (a) In the city of London, the common council ;
- (b) In any metropolitan borough, the borough council ;
- (c) In any administrative county (other than the county of London) or county borough (except any part thereof which is a port sanitary district), the council of the county or borough ;
- (d) In any port sanitary district, the port sanitary authority :

Provided that the London County Council shall, to the exclusion of any other authority, be the local authority for the purpose of executing and enforcing this Act with respect to the sewers vested in, and the sludge vessels belonging to, that council ; provided also that a county council may, with the consent of the council of any borough or county district in the county, delegate its powers and duties under this Act to that borough or district council, and, where powers and duties have been so delegated, the borough or district council shall be the local authority for the purposes of this Act.

(2) The expenses incurred by the local authority under this Act shall be defrayed in the case of a county out of the general county fund, and in the case of a port sanitary authority as part of their expenses as a port sanitary authority, and in any other case as expenses incurred by the local authority in the execution of the Public Health (London) Act, 1891, or the Public Health Act, 1875, as the case may be.

54 & 55 Vict.
c. 76.
38 & 39 Vict.
c. 55.

“Port sanitary districts” and “port sanitary authorities” are now “port health districts” and “port health authorities” (see *ante*, p. 9).

As to expenses (outside London), see now L. G. A., 1933, Part VIII., *ante*, pp. 1007 *et seq.*

Powers of
Board of
Agriculture
and Fisheries
in case of
default by
local
authority.

3.—(1) Where a local authority having power to enforce this Act fails, in respect of land of which it is the occupier, to comply with the provisions of section one of this Act or fails, in respect of land for which it is the local authority under section two of this Act, to execute or enforce any of the provisions of this Act, the Board of Agriculture and Fisheries may by order empower the person therein named to enter upon such land and to execute and enforce those provisions or to procure the execution and enforcement thereof.

(2) The expenses incurred by or on behalf of the Board by reason of any such default of a local authority shall be paid to the Board on demand by the treasurer or other proper officer of that local authority, and in default of payment the Board may recover the amount of such expenses (except in so far as such expenses are otherwise recoverable under this Act) from the local authority ; and any sum paid by a local authority under this section shall be defrayed as expenses under this Act.

(3) For the purposes of this section, any statement contained in an order of the Board that a local authority has failed to comply with, execute, or enforce any of the provisions of this Act shall be conclusive evidence of such default, and a certificate by the Board of expenses incurred under this section shall be conclusive evidence of such expenses.

The powers of the Board (now Minister) of Agriculture and Fisheries in so far as they relate to the supervision of the administration and enforcement of this Act in port sanitary districts (now port health districts) or in respect to vessels, were transferred to the Minister of Health by the Ministry of Health (Rats and Mice Destruction, Transfer of Powers) Order, 1922 (S. R. & O. 1922, No. 948). To this extent, therefore, the words “Minister of Health” must be substituted in the Act for the words “Board of Agriculture and Fisheries.”

For definition of “land,” see s. 8, *post*, p. 5236.

4. A local authority having power to enforce this Act may from time to time, by public notice within its area, give instructions as to the most effective methods that can be adopted, both individually and collectively, with a view to the destruction of rats and mice. **Section 4.**

Notice by local authority of effective methods.

As to giving of public notice by a local authority, see L. G. A., 1933, s. 287, *ante*, p. 1169.

5.—(1) Where a local authority having power to enforce this Act is of opinion that the occupier of any land in its district has failed to take such steps as are required by section one of this Act, such local authority may either serve a notice on the occupier requiring him to take such steps as are prescribed in the notice within a time specified therein, or, after not less than twenty-four hours previous notice to the occupier, enter upon the land and take such steps as are necessary and reasonably practicable for the purpose of destroying the rats and mice on the land or of preventing the land from becoming infested with rats and mice, and may recover any reasonable expenses so incurred from the occupier of the land summarily as a civil debt. Powers of local authorities and authorised persons, and penalty for interference.

(2) A local authority in the exercise of its powers under this section shall, as far as possible, take or secure collective action for the destruction of rats or mice.

(3) . . .

(4) Any person authorised in writing by a local authority under this Act, or by a person empowered to act in default of a local authority, may enter any land in the district of such local authority for the purpose of ascertaining whether the steps required by section one of this Act are being taken or of executing and enforcing this Act in any other respect. Any such person must produce the document by which he is authorised if so required.

(5) Any person who shall obstruct or impede an officer or other person authorised as aforesaid in the execution of his duties or powers under this Act, or who, being the occupier of any land, shall fail to comply with any reasonable requirement of any such officer or other authorised person for facilitating the execution of his duties or powers, shall be liable on summary conviction to a fine not exceeding twenty pounds.

Sub-s. (3) has been repealed by the L. G. A., 1933. As to delegation of powers to a committee by a local authority, see s. 85 of that Act, *ante*, p. 847.

As to prosecutions under sub-s. (5), see s. 7, *infra*.

6.—(1) This Act shall apply to a vessel as if the vessel were land, and the master of the vessel shall be deemed to be the occupier thereof. **Application to vessels.**

(2) A local authority having power to enforce this Act may, by notice served on the master of a vessel in its district, require him to take such necessary and reasonably practicable steps as are prescribed by the notice for preventing the escape of rats and mice from the ship, and, if a master fails to comply with the requirements of any such notice served on him, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

See the Port Sanitary Regulations, 1933, *ante*, p. 2430.

As to prosecutions, see s. 7, *infra*.

7.—(1) A prosecution for an offence under this Act shall not be instituted except by or with the authority of the Board of Agriculture and Fisheries or the local authority: Provided that this section shall not apply to Scotland. **Prosecutions.**

(2) In any proceedings under this Act a notice purporting to be signed by the clerk of a local authority shall, unless the contrary is proved, be deemed to have been signed by the clerk with the authority of the local authority.

For circumstances in which the words "Minister of Health" are to be read for "Board of Agriculture and Fisheries," see notes to s. 3, *ante*, p. 5234.

Section 8.Interpreta-
tion.**8. In this Act—**

The expression "occupier" means, in the case of land not occupied by any tenant or other person, the owner of the land ;

The expression "land" includes any buildings and any other erection on land, and any cellar, sewer, drain or culvert in or under land.

9. [Application to Scotland.]Saving of
existing
powers.

10. The powers conferred by this Act shall be in addition to and not in derogation of any powers conferred on any Government department or local authority, and all such powers may be exercised concurrently in respect of any land.

See definition of "land" in s. 8, *supra*.

Service of
notices.

11. Any notice under this Act may be served either personally or by registered post.

Short title.

12. This Act may be cited as the Rats and Mice (Destruction) Act, 1919, and shall come into operation on the first day of January nineteen hundred and twenty.

THE FERRIES (ACQUISITION BY LOCAL AUTHORITIES) ACT, 1919.

(9 & 10 GEO. 5, c. 75.)

An Act to enable Local Authorities to acquire existing Ferries by Agreement.

[23rd December, 1919.]

Power of local
authority to
acquire, etc.
existing ferries.

1.—(1) A local authority (*a*) may, with the consent of the Minister of Transport, purchase or accept the transfer of, and the owner of any existing ferry (*b*) may sell or transfer to a local authority, upon such terms as may be agreed on between the owner and the local authority, any existing ferry which is within the area of that local authority or which serves the inhabitants of that area (*c*).

(2) Subject to the provisions of any Act of Parliament under which the ferry was established, and to the rights of any other persons, the local authority may work, maintain and improve the ferry and charge such tolls as were legally chargeable in respect of the ferry before the sale or transfer thereof to the local authority, or such other tolls as the local authority, with the approval of the Minister of Transport, may determine, or, with the approval of the Minister of Transport, the local authority may, if they think fit, free the ferry from tolls, and shall have the rights and powers which the owner of the ferry possessed and shall be subject to the obligations and liabilities to which he was subject.

(3) A local authority may join with any other local authority for the purchase or acceptance, working, maintenance, or improvement of a ferry under this Act, or may contribute towards the expenses of the purchase or acceptance, working, maintenance, or improvement of a ferry by another local authority, and any difference which may arise between any local authorities who are acting jointly or jointly bearing any expenses under this subsection shall be determined by the Minister of Transport, or by an arbitrator appointed by him, and such determination shall be final and binding.

(4) In this Act the expression "existing ferry" means any ferry legally established by Act of Parliament or otherwise (*d*) at the date of the purchase

or transfer, and includes all boats and other vessels, landing stages, approaches, apparatus, plant and other property used in connection with the ferry. Section 1.
51 & 52 Vict.
c. 41.

(5) The Minister of Transport shall have the like powers with respect to the holding of local inquiries for the purposes of this Act as are conferred by section eighty-seven of the Local Government Act, 1888, upon the Minister of Health for the purposes of that Act (e).

(6) In this Act the expression "local authority" means and includes a county council, the mayor, aldermen and burgesses of a county or other borough, and the council of any urban or rural district.

(7) . . . (f).

(8) A local authority . . . may borrow for the purposes of this Act . . . (g).

(a) See the definition of a local authority in sub-s. (6).

(b) See the definition of an existing ferry in sub-s. (4).

(c) This is a wide expression. A ferry may serve the inhabitants of an area though it does not adjoin that area.

(d) A ferry is created by Royal grant, or in modern days by Act of Parliament, or exists by prescription which implies a Royal grant. See as to the creation of a ferry and generally as to the law relating to ferries, Halsbury's Laws of England, Vol. 15, p. 21. Reference may also be made to *Hammerton v. Earl of Dysart*, [1916] 1 A. C. 57; 80 J. P. 97; 24 Digest 974, 66; *Layzell v. Thompson* (1927), 91 J. P. 129; Digest Supp.; *Bournemouth-Swanage Motor Road and Ferry Co. v. Harvey & Sons*, [1930] A. C. 549; 94 J. P. 217; Digest Supp.

(e) This section is set out in full at p. 4763, *ante*.

(f) Subsection repealed by L. G. A., 1933, *ante*, p. 735.

(g) Certain words in this subsection were repealed by the L. G. A., 1933.

2. In the case of every ferry acquired under this Act, regulations with regard to the working shall be made by the local authority for the protection from injury of passengers and the general public: Provided that no such regulation shall have any force or validity until the same have been confirmed by the Minister of Transport with or without amendment. Offenders against such regulations shall be liable on summary conviction to such penalties, not exceeding forty shillings, as may be thereby prescribed. Protection of
general public.

3. Nothing in this Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown and in particular nothing herein contained authorises any local authority to take, use, or in any manner interfere with any portion of the shore or bed of the sea or of any river, channel, creek, bay, or estuary or any land, hereditaments, subjects, or rights of whatsoever description belonging to His Majesty in right of His Crown and under the management of the Commissioners of [Crown Lands] (a) or of the Board of Trade respectively without the consent in writing of the Commissioners of [Crown Lands] (a) or the Board of Trade, as the case may be, on behalf of His Majesty first had and obtained for that purpose (which consent the said Commissioners and Board are hereby respectively authorised to give). Crown rights.

(a) Words in brackets substituted for "Woods" in consequence of the Forestry (Title of Commissioners of Woods) Order, 1924. See Crown Lands Act, 1927, s. 1 (4) (3 Halsbury's Statutes 330).

4. Without prejudice to any existing right of His Majesty, and save as provided by the Army Act, nothing in this Act shall extend to authorise any tolls to be demanded or received from any person when on duty in the service of the Crown, or for any animal, vehicle, or goods the property of, or when being used in the service of, the Crown, or returning after being so used, or from any police officer acting in the execution of his duty, or for any mail bag as defined by the Post Office Act, 1908 (a). If any person wilfully and with intent to defraud claims or takes the benefit of any such exemption as aforesaid without being entitled thereto, he shall for every Exemption
from tolls in
case of persons
in service of
Crown, etc.

8 Edw. 7. c. 48.

Section 4 such offence be liable, on summary conviction to a fine not exceeding ten pounds.

(a) S. 89 (13 Halsbury's Statutes 39). As to the exemption of servants of the Crown such as postmen, see *A.-G. v. Londonderry Bridge Commissioners*, [1903] 1 I. R. 389; 24 Digest 974, f, and as to exemptions under the Army Act (17 Halsbury's Statutes 131), see *A.-G. v. Selby Bridge Proprietors*, [1921] 3 K. B. 31; 39 Digest 340, 260.

5. [Application to Ireland.]

6. (1) [Scotland.]

Extent and short title.

(2) This Act may be cited as the Ferries (Acquisition by Local Authorities) Act, 1919.

THE PUBLIC LIBRARIES ACT, 1919.

(9 & 10 GEO. 5, c. 93.)

An Act to amend the Public Libraries Acts, 1892 to 1901 (a), and to repeal so much of the Museums and Gymnasiums Act, 1891 (b), as authorises the provision of Museums in England and Wales. [23rd December, 1919].

Powers of county councils to adopt the Public Libraries Acts*

1.—(1) The council of any county in England or Wales shall have power by resolution specifying the area to which the resolution extends to adopt the Public Libraries Acts for the whole or any part of their county, exclusive of any part of the county which is an existing library area within the meaning of this Act, as if the area specified in the resolution were a library district for the purposes of those Acts (c).

(2) Where any resolution is passed by the council of a county under this section, the Public Libraries Acts shall, as respects the area specified in the resolution, be carried into execution by the council as the library authority of the area, and, subject to the provisions of this Act, the power to adopt those Acts for any district comprised in that area, being a library district within the meaning of the Public Libraries Act, 1892, shall cease (d).

55 & 56 Vict. c. 53.

(3) Where the Public Libraries Acts have been adopted by the council of a county, the council may borrow for the purposes of those Acts . . . (e) :

Provided that money borrowed for the purposes of those Acts shall not be reckoned as part of the total debt of the county for the purposes of subsection (2) of section sixty-nine of the Local Government Act, 1888, and that sixty years shall be substituted for thirty years in subsection (5) of the said section sixty-nine as the maximum period within which money borrowed for the purposes of those Acts is to be repaid (f).

(a) The Acts referred to are the Public Libraries Act, 1892, the Public Libraries (Amendment) Act, 1893, and the Public Libraries Act, 1901. All these Acts are set out *in extenso*, ante, pp. 4840, 4871, 4995.

(b) See this Act *in extenso*, ante, p. 4827.

(c) The power of adopting these Acts is extended by the text to a County Council. For the definition of an existing library area, see s. 10, post, p. 5244. And for the definition of a library district, see the Act of 1892, s. 1 (2), ante, p. 4840.

(d) The power to adopt the Public Libraries Acts is that conferred by the Act of 1892, s. 1 (2), on urban districts and parishes not within urban districts. Where the County Council adopt the Acts for any area under sub-s. (1), the power to adopt by urban districts and parishes will cease.

(e) Certain words here were repealed by the L. G. A., 1933; for power to borrow, see now *ibid.*, s. 195, ante, p. 1023.

(f) The L. G. A., 1888, s. 69, ante, p. 4756, authorised a county council to borrow for any purpose for which a county council were authorised by any Act to borrow. But it

**Note to
Section 1.**

provided by sub-s. (2) that where the total debt of the county exceeded one-tenth of the rateable value of the county, the amount should not be borrowed save pursuant to a provisional order made by the L. G. B. (now the Minister of Health), and confirmed by Act of Parliament. This restriction having been removed by s. 74 of the L. G. A., 1929, *post*, Vol. V., the words in italics were repealed by Sched. XII., Pt. V., *ibid.*, *post*, Vol. V. By sub-s. (5) of s. 69 the loan had to be repaid within thirty years; this is extended to sixty years by the provision in the text in case of loans for the purposes of the Public Libraries Acts.

2.—(1) Any library authority, being the library authority of an existing library area (a) and not being the council of a county borough, may, on such terms as may be agreed upon between the authority and the council of the county and approved by the Board (b), relinquish in favour of the council of the county any of their powers and duties under the Public Libraries Acts, and in that case the powers and duties so relinquished shall cease and the provisions of this Act shall have effect as if the council of the county had passed a resolution under this Act (c) adopting the Public Libraries Acts as respects that area.

Arrangements
between exist-
ing library
authorities and
county councils.

(2) Where under the provisions of this Act any existing library authority relinquishes its powers and duties in favour of the council of a county, any property or rights acquired for the purpose of the performance of those powers and duties shall by virtue of this Act be transferred to and become vested in the county council and any liabilities incurred for that purpose shall by virtue of this Act become liabilities of the county council.

(a) See the definition of this expression in s. 10, *post*, p. 5242.

(b) *I.e.* the Board of Education. See s. 10, *post*, p. 5242.

(c) See s. 1, *ante*, p. 5238.

3.—(1) Where after the commencement of this Act the Public Libraries Acts are adopted by an authority which is not the library authority of an existing library area (a) and which is the local education authority for the purpose of Part II. of the Education Act, 1902 (b), all matters relating to the exercise by the authority of their powers under the Public Libraries Acts, except the power of raising a rate or borrowing money, shall stand referred to the education committee established under the Education Acts, 1870 to 1918 (c), and the authority before exercising any such powers shall, unless in their opinion the matter is urgent, receive and consider the report of the education committee with respect to the matter in question.

Reference and
delegation of
library powers
to education
committees.
2 Edw. 7, c. 42.

(2) A library authority, being the local education authority for the purpose of Part II. of the Education Act, 1902, may refer any matters relating to the exercise by them of their powers under the Public Libraries Acts to the education committee established under the Education Acts, 1870 to 1918 (c), and may delegate to that committee any of those powers other than the power of raising a rate or borrowing money, and any education committee to which any powers are delegated under this section may, subject to any directions of the council, delegate all or any of those powers to a sub-committee consisting either in whole, or in part, of members of the education committee.

(3) Where any powers stand referred or are delegated to an education committee in pursuance of this section, those powers shall not, by reason of being so delegated, be deemed for any purposes whatsoever to be powers conferred by the Education Acts, 1870 to 1918.

(a) See the definition of this expression in s. 10, *post*, p. 5242.

(b) Part II. of the Education Act, 1902, related to Higher Education, and the local education authority for that purpose was the council of a county or county borough.

(c) The education committee was established under the Education Act, 1902, s. 17. See now s. 4 of the Education Act, 1921 (7 Halsbury's Statutes 132), which repealed the Act of 1902.

Section 4.

Provision as to
expenses and
audit.

55 & 56 Vict.
c. 53.

4.—(1) *Section two of the Public Libraries Act, 1892 (which imposes limitations on the amount of the rate which may be levied for the purposes of that Act) shall cease to have effect, and, where the expenses incurred by any library authority for the purposes of the Public Libraries Acts during the financial year current at the commencement of this Act exceed the amount produced by the maximum rate which the authority have power to levy for the purposes of those Acts, no part of those expenses shall be open to objection on the audit of the accounts of the authority on the ground that the statutory limitation on expenditure has been exceeded, if and in so far as the expenses were in the opinion of the Ministry of Health reasonably incurred (a) :*

Provided that, if the library authority of any library district, either at the time when the Public Libraries Acts are adopted for the district or at any subsequent time, by resolution declare that the rate to be levied for the purposes of those Acts in the district or any specified portion of the district in any one financial year shall not exceed such sum in the pound as may be specified, the power to raise a rate for the purpose of those Acts in that district shall be limited accordingly, and any such resolution shall not be rescinded until the expiration of twelve months from the date on which it was passed.

(2) Any expenses incurred by the council of a county under the Public Libraries Acts shall be defrayed out of the county fund (*b*), and the council may, if they think fit, after giving reasonable notice to the overseers of the parish or parishes (*c*) concerned, and in the case of an area situate within a borough including a metropolitan borough or urban district after consultation with the council of the borough or urban district, charge any expenses incurred by them under those Acts on any parish or parishes which in the opinion of the council of the county are served by any institution which has been provided or is being maintained by that council under those Acts :

Provided that the council of a county shall not charge any expenses so incurred on any parish or parishes within an existing library district without the concurrence of the library authority of that district (*d*).

(3) . . . (*e*).

(a) Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183). No statutory limit is now imposed, but the library authority may themselves limit the expenditure in connection with these Acts by resolution.

(b) For the provisions in force as to the county fund, see the L. G. A., 1933, s. 181, *ante*, p. 1009. The expenses will therefore fall on the county at large, except in cases within the latter part of the section.

(c) Overseers were abolished by s. 62 of the R. & V. Act, 1925, *ante*, p. 2222. Art. 14 of the Overseers Order, 1927, *ante*, p. 3600, provides that notice must now be given in the case of an urban parish to the clerk to the rating authority and in a rural parish to the chairman of the parish council or parish meeting.

(d) See the Act of 1892, s. 1, *ante*, p. 4840.

(e) Repealed by the L. G. A., 1933, *ante*, p. 735.

Power to
rescind resolu-
tions of county
councils adopt-
ing the Public
Libraries Acts.

5.—(1) The council of a county by whom a resolution has been passed under this Act adopting the Public Libraries Acts may, if they think it advisable so to do with a view to the better carrying into effect of those Acts in any district (*a*), apply to the Board (*b*) for an order rescinding the resolution as respects that district, and the Board may on any such application, if they think fit, make an order accordingly, and thereupon the Public Libraries Acts shall, as respects that district, have effect as from the date specified in that behalf in the order as though the resolution had not been passed.

(2) Any order made under this section may contain such consequential and supplemental provisions with respect to the transfer of any property or rights acquired or liabilities incurred under the Public Libraries Acts from

the council of the county to the library authority of the district concerned as the Board think fit, but no such liabilities shall be transferred to such last-mentioned library authority without their consent. **Section 5.**

(3) In this section the expression "district" means, as the case requires, either a library district or a district which would have been a library district if a resolution adopting the Public Libraries Acts had not been passed under this Act by the council of the county (c).

(a) See sub-s. (3).

(b) That is, the Board of Education. See s. 10, *post*, p. 5242.

(c) For the definition of library district see s. 1 (2) of the 1892 Act, *ante*, p. 4840. And see s. 1 (2) of this Act, *ante*, p. 5238, as to the excluding effect of a resolution of the county council.

6. A library authority, being the local education authority for the purpose of Part II. of the Education Act, 1902 (a), may be authorised to purchase land compulsorily for the purpose of any of their powers or duties under the Public Libraries Acts in the same manner as they are authorised to purchase land compulsorily for the purpose of their powers or duties under the Education Acts, 1870 to 1918, and subsection (1) of section thirty-four of the Education Act, 1918, shall apply accordingly with the substitution of a reference to the Public Libraries Acts for references therein to the Education Acts, and with the omission of proviso (b) thereof (b). Power of certain library authorities to purchase land compulsorily. 8 & 9 Geo. 5, c. 39.

(a) See note (c) to s. 3, *ante*, p. 5239.

(b) Under s. 34 (1) of the Act of 1918 land might be compulsorily acquired by an order submitted to the Board of Education and confirmed by them. The Act of 1918 was repealed by the Education Act, 1921. See the provisions of ss. 109 *et seq.* of that Act (7 Halsbury's Statutes 190 *et seq.*) and the Order of 1933 (S. R. & O., 1933, No. 1021), *ante*, p. 3144, as to the acquisition of land.

7. *Section three of the Public Libraries Act, 1893, shall cease to have effect* and accordingly any resolution passed in accordance with the ordinary procedure of the council concerned shall have full effect for the purposes of that Act (a). Repeal of s. 3 of 56 & 57 Vict. c. 11.

(a) Sect. 3 of the Act of 1893, *ante*, p. 4871, provided for the manner in which the Libraries Acts might be adopted. It is now superseded by the provision in the text. Words in italics repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

8. As from the date of the commencement of this Act, the power of providing schools for science and schools for art conferred by section eleven of the Public Libraries Act, 1892, shall cease, without prejudice, however, to the power of maintaining under the Public Libraries Acts any such school established under that section before that date (a). Power of providing schools of science and of art under s. 11 of 55 & 56 Vict. c. 53 to cease.

(a) See the section referred to, *ante*, p. 4842.

9. As from the date of the commencement of this Act, so much of section four of the Museums and Gymnasiums Act, 1891, as authorises the provision of museums in England and Wales shall cease to have effect, without prejudice however, subject as hereinafter provided, to the power of maintaining under that Act any museum established thereunder before the said date (a): Power of providing museum under 54 & 55 Vict. c. 22 to cease.

Provided that, where the district for which a museum has been provided under the said Act at the said date is, or is part of, or at any time after the said date becomes, or becomes part of, a district which is a library district (b) within the meaning of the Public Libraries Acts, the museum shall be transferred to the library authority of the district, and be maintained by that authority as though it had been provided under those Acts (c).

(a) See the section of the Act of 1891 referred to in the text, *ante*, p. 4828. Under s. 11 of the 1892 Act, *ante*, p. 4842, a library authority had power to provide not only public

Note to Section 9. libraries, but also public museums, schools for science, art galleries, and schools of art. See now, however, as to schools for science and art, s. 8, *ante*, p. 5241.

(b) See the Act of 1892, s. 1, *ante*, p. 4840.

(c) *I.e.*, under s. 11 of the 1892 Act, *ante*, p. 4842.

Interpretation.

10. For the purposes of this Act—

The expression “the Public Libraries Acts” means the Public Libraries Acts, 1892 to 1901 and this Act (a);

The expression “the Board” means the Board of Education;

The expression “existing library area” means a district as respects which the Public Libraries Acts are in force and in which expenses have, within the last preceding financial year, been incurred for the purposes of those Acts, or in which a public library has been established and is being maintained under or by virtue of any local Act;

The expression “financial year” means the year ending on the thirty-first day of March.

(a) The Public Libraries Acts are now Public Libraries Act, 1892; Public Libraries (Amendment) Act, 1893; Libraries Offences Act, 1898; Public Libraries Act, 1901 *ante*, pp. 4840, 4871, 4948, 4995, and this Act.

Short title and repeal.

11.—(1) This Act may be cited as the Public Libraries Act, 1919, and shall be construed as one with the Public Libraries Acts, 1892 to 1901, and those Acts and this Act may be cited together as the Public Libraries Acts, 1892 to 1919 (a).

(2) *The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule (b).*

(a) See note (a) to s. 10, *supra*.

(b) This subsection and the Schedule referred to therein were repealed by S. L. R. A., 1927 (18 Halsbury's Statutes 1183).

Section 11.

SCHEDULE.

<i>Session and Chapter.</i>	<i>Short Title.</i>	<i>Extent of Repeal.</i>
55 & 56 Vict. c. 53.	<i>The Public Libraries Act, 1892.</i>	Section two; in section three the words “or with respect to any limitation of the rate other than the limitations specified in this Act”; subsection (4) of section twenty-one.
56 & 57 Vict. c. 11.	<i>The Public Libraries (Amendment) Act, 1893.</i>	In section two the words “subject to the conditions contained in the second section of that Act” and the words “and the limitation of the maximum rate to be levied for the purposes of that Act may within the limits fixed by that Act be fixed, raised or removed”; section three.
1 Edw. 7, c. 19 .	<i>The Public Libraries Act, 1901.</i>	Section ten.

ELECTRICITY (SUPPLY) ACT, 1919 (a).

(9 & 10 GEO. 5, c. 100.)

An Act to amend the Law with respect to the supply of electricity.

[23rd December, 1919.]

Electricity Commissioners.

1.—(1) For promoting, regulating, and supervising the supply of electricity there shall be established as soon as may be after the passing of this Act, a body to be called the Electricity Commissioners, who shall have such powers and duties as are conferred on them by or under this Act, and, subject thereto, shall act under the general directions of the Board of Trade (b).

Appointment of
Electricity
Commissioners.

(2) The Commissioners, not exceeding five in number, of whom one shall be chairman, shall be appointed by the Board of Trade: in the case of two of the Commissioners the term of office shall be such as may be fixed by the Board of Trade at the time when the appointment is made; the other Commissioners shall hold office during His Majesty's pleasure.

(3) Three of the Commissioners shall be whole-time officers.

(4) Three of the Commissioners shall be selected for practical, commercial, and scientific knowledge and wide business experience, including that of electrical supply.

(5) A person shall be disqualified for being appointed or being a Commissioner if he has, directly or indirectly, any share or interest in any undertaking for the supply of electricity, otherwise than as a ratepayer in the case of an undertaking of a local authority.

(6) The Commissioners may act by two of their number and notwithstanding a vacancy in their number.

(7) The Electricity Commissioners may appoint a secretary and such inspectors, officers and servants (c) as the Commissioners may determine, and there shall be paid out of the fund hereinafter established to the Commissioners, and to the secretary, inspectors, officers and servants of the Commissioners, such salaries and remuneration, and on retirement [or death] (d) such pensions or gratuities as the Board of Trade (e) may determine, and any expenses incurred by the Commissioners in the exercise and performance of their powers and duties under this Act, shall be defrayed out of the said fund (f).

(8) Every document or instrument purporting to be an order or instrument issued by the Commissioners, and to be signed by the secretary to the Commissioners, or any person authorised to act on behalf of the secretary, shall be received in evidence, and be deemed to be such order or instrument without further proof unless the contrary is shown.

(a) This Act is one of the Electricity (Supply) Acts, 1882–1936, which include the Electric Lighting Acts, 1882, 1888 and 1909, *ante*, pp. 4642, 4700, 5096, and the Electricity (Supply) Acts, 1922, 1926, 1928, 1933, and 1935, and the Electricity Supply (Meters) Act, 1936, Vol. V. and 7 Halsbury's Statutes 778, 792, 826; 26 Halsbury's Statutes 137; 28 Halsbury's Statutes 51; 29 Halsbury's Statutes 133.

(b) The powers and duties of the Board of Trade under this Act and the Electric Lighting Acts have been transferred to the Minister of Transport by Order in Council made under s. 39 (1) of this Act, *post*, p. 5265, but by a proviso to that sub-section it is enacted that the power of appointing Electricity Commissioners shall be exercised by the Minister of Transport with the concurrence of the Board of Trade.

(c) An officer or servant appointed under this subsection may be appointed to act as a meter examiner under the Electricity Supply (Meters) Act, 1936, s. 1 (2), Vol. V. and 29 Halsbury's Statutes 133.

(d) The words in brackets were added by s. 50 and Sched. VI., Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821, 825.

(e) For Board of Trade now read Minister of Transport. See note (b), *supra*.

**Note to
Section 1.**

(f) See Superannuation (Various Services) Act, 1938, Sched. (31 Halsbury's Statutes 627), as to certain superannuation benefits which may be paid to dependants and to legal personal representatives.

Exercise of
powers through
Electricity
Commissioners.

2. The Board of Trade (a) may exercise through the Electricity Commissioners any of their powers and duties under the Electric Lighting Acts (b) or the orders or regulations made thereunder or under any local Acts relating to the supply of electricity or under any enactment relating to matters incidental to such supply.

(a) See note (b) to s. 1, *ante*, p. 5243.

(b) This expression is defined to mean the Electric Lighting Acts, 1882 to 1909 (s. 36, *post*, p. 5263).

Power to conduct experiments.

3. The Electricity Commissioners may, either by themselves or through any joint electricity authority established under this Act, or any authorised undertakers (a), or other competent body, conduct experiments or trials for the improvement of the methods of electric supply or of the utilisation of fuel or water-power, and, subject to the approval of the Board of Trade (b), incur such expenditure as may be necessary for the purpose.

(a) This expression includes authorised distributors and power companies (s. 36, *post*, p. 5263). As to who are authorised distributors and power companies, see the same section.

(b) See note (b) to s. 1, *ante*, p. 5243.

Advisory
Committee.

4. The Electricity Commissioners may appoint a committee or committees consisting of chairmen or other members of joint electricity authorities established under this Act, or representatives of authorised undertakers or other specially qualified persons for the purpose of giving to the Commissioners advice and assistance on such matters connected with the general improvement and development of the supply of electricity as may be referred to the committee by the Commissioners, and the Commissioners shall take into consideration any representations which have been made to them by any such committee.

Reorganisation of Supply of Electricity.

Electricity
districts.

5(a).—(1) *The Electricity Commissioners may provisionally determine that any district in the United Kingdom shall be constituted a separate electricity district for the purposes of this Act, and, in considering what areas are to be included in a district, areas shall be grouped in such manner as may seem to the Commissioners most conducive to the efficiency and economy of the supply of electricity and to convenience of administration. Before finally determining the area of any such district, the Electricity Commissioners shall publish notice of their intention so to do and of the area proposed to be included in such district, and shall also give notice thereof to all county councils, local authorities, and authorised undertakers any part of whose county district or area of supply is proposed to be included in the electricity district, and, if any objection or representation be made on account of the inclusion in or the exclusion from the proposed district of any area, the Electricity Commissioners shall hold a local inquiry with reference to the area to be included in the proposed district :*

Provided that, where a local inquiry is held as hereinafter provided regarding the improvement of the organisation of the supply of electricity in any district, the area of that district shall not be finally determined until after that inquiry has been held.

(2) *Where it appears to the Electricity Commissioners with respect to any electricity district so provisionally determined that the existing organisation for the supply of electricity therein should be improved, the Commissioners shall give notice of their intention to hold a local inquiry into the matter, and shall give to authorised undertakers, county councils, local authorities, railway companies using or proposing to use electricity for traction purposes, large consumers*

of electricity, and other associations or bodies within the district which appear to the Commissioners to be interested, an opportunity to submit, within such time as the Commissioners may allow, a scheme or schemes for effecting such improvement, including proposals for altering or adjusting the boundaries of the district and, where necessary, the formation of a joint electricity authority [or other body] (b) for the district.

Section 5.

(3) If no such scheme is submitted within the time so allowed, or if no scheme submitted is approved by the Commissioners, the Commissioners may themselves formulate such a scheme.

(4) The Electricity Commissioners shall publish, in such manner as they think best adapted for ensuring publicity, any scheme which they have approved, with or without modifications, or which they have themselves formulated, and shall hold a local inquiry thereon.

(a) See now the substituted section in s. 36, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 815.

(b) These words were added by s. 19 of the Electricity (Supply) Act, 1922, Vol. V., *post*.

6 (a).—(1) A scheme under the last-foregoing section may provide for the establishment and (where desirable) the incorporation with power to hold land without licence in mortmain, of a joint electricity authority representative of authorised undertakers (b) within the electricity district, either with or without the addition of representatives of the council of any county situate wholly or partly within the electricity district, local authorities, large consumers of electricity, and other interests [(including the persons employed in connection with the supply of electricity)] (c) within the electricity district, and, subject as hereinafter in this Act provided, for the exercise by that authority of all or any of the powers of the authorised undertakers within the electricity district, and for the transfer to the authority of the whole or any part of the undertakings of any of those undertakers, upon such terms as may be provided by the scheme, and the scheme may contain any consequential, incidental, and supplemental provisions which appear to be expedient or proper for the purpose of the scheme (d), including provisions determining the area included in the electricity district: [and the conditions of employment of persons employed by the joint electricity authority] (e).

Joint electricity authorities.

Provided that no such scheme shall provide for the transfer to the authority of any part of an undertaking except with the consent of the owners thereof.

(2) The scheme may provide for enabling the joint electricity authority to delegate, with or without restrictions, to committees of the authority any of the powers or duties of the authority, and for the payment out of the revenues of the authority of travelling and subsistence expenses of members of the authority, and reasonable compensation for loss of remunerative time.

(a) The construction of this section was considered in *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K. B. 171; 88 J. P. 13; Digest Supp. A scheme which compelled the joint electricity authority to appoint two committees and assigned to each of the committees separate portions of the district and delegated separate powers and duties to each committee was in that case held to be *ultra vires*.

A joint electricity authority, although authorised by a scheme under this Act to promote "any" bill "for the purposes of this scheme," cannot promote a bill to enlarge the limits of their area as defined by the scheme or to obtain additional powers which might have been but were not conferred by the scheme (*Att.-Gen. v. London and Home Counties Joint Electricity Authority*, [1929] 1 Ch. 513; 93 J. P. 115; Digest Supp.).

(b) See definition in s. 36, *post*, p. 5263.

(c) The parenthesis in brackets was added by s. 20 of the Electricity (Supply) Act, 1922, Vol. V. and 7 Halsbury's Statutes 788.

(d) The scheme may also contain provisions (a) for the carrying out by the joint electricity authority for the development of the supply of electricity within the district; and

**Note to
Section 6.**

(b) for the subsequent alteration of the constitution of the joint electricity authority (see s. 37, Electricity (Supply) Act, 1926; Vol. V. and 7 Halsbury's Statutes 815).

(e) These words were added by s. 20 of the Electricity (Supply) Act, 1922, Vol. V., *post*.

Confirmation of
schemes.

7.—(1) The Electricity Commissioners may make an order giving effect to the schemes embodying decisions they arrive at as the result of such inquiry as aforesaid, and present the order for confirmation by the Board of Trade (a), who may confirm the order either without modification or subject to such modifications as they think fit (b).

(2) Any such order shall be laid, as soon as may be after it is confirmed before each House of Parliament, but shall not come into operation unless and until it has been approved either with or without modification by a resolution passed by each such House, and when so approved shall have effect as if enacted in this Act (c).

(3) An order made under this section may be altered by a subsequent order made, confirmed, and approved in like manner as the original order (d).

(a) Now M. of T. See note (b) to s. 1, *ante*, p. 5248.

(b) A writ of prohibition issued to prohibit the commissioners from holding a local inquiry and proceeding further with the consideration of an *ultra vires* scheme notwithstanding the provisions of this section (*R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K. B. 171; 88 J. P. 13; 20 Digest 197, 1).

(c) As to the effect of this provision, see *Ex parte Ringer* and the cases cited therewith at p. 4506, *ante*.

(d) This provision includes power by a subsequent order to constitute a joint electricity authority where the original order did not provide for the constitution of such an authority, and such an order shall apply s. 16 of this Act, *post*, p. 5242, as amended to the officers and servants of the body displaced by the joint electricity authority (s. 38, Electricity (Supply) Act, 1926; Vol. V. and 7 Halsbury's Statutes 815).

General powers
and duties
of joint electri-
city authorities.

8.—(1) It shall be the duty of every joint electricity authority constituted under this Act to provide or secure the provision of a cheap and abundant supply of electricity within their district, and for that purpose every such authority shall have such powers and duties as are conferred or imposed upon them by the scheme under which they are constituted or by this Act with respect to—

(a) the supply of electricity within their district (including the construction of generating stations (a), main transmission lines (a), and other works required for the purpose);

(b) the acquisition of the undertakings or parts of the undertakings of authorised undertakers (a);

and such powers incidental thereto, as are in the scheme or in this Act mentioned, and every such authority shall comply with any general directions given to them by the Electricity Commissioners as to the exercise and performance of their powers and duties (b).

(2) A joint electricity authority may, with the approval of the Electricity Commissioners, establish or join with any other such authority in establishing a scheme for the payment of superannuation allowances and gratuities to any of their officers and servants who become incapable of discharging their duties by reason of permanent infirmity of body and mind or old age upon their resigning or otherwise ceasing to hold office, and the expenses incurred under any such scheme shall be treated as part of the expenses of the authority in carrying out their powers and duties under this Act (c).

(a) See the definitions in s. 36, *post*, p. 5268.

(b) See the power given to discharge purchase price by the issue of stock by s. 4 of the Electricity (Supply) Act, 1922, Vol. V., *post*, and see s. 8 of the same Act, Vol. V., *post*. See also the power to lease undertakings to joint electricity authorities given by s. 6 of the same Act, Vol. V., *post*.

(c) Section 33, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 812, gave specific power to a joint electricity authority to adopt the provisions of the Local Government and other Officers' Superannuation Act, 1922 (10 Halsbury's Statutes 863),

without prejudice to the provisions of this section, so that apparently the approval of the Electricity Commissioners was required to such adoption. But see now s. 34 of the L. G. Superannuation Act, 1937, *ante*, p. 2090.

**Note to
Section 8.**

Generating Stations.

9. A joint electricity authority may, with the consent of the Electricity Commissioners, by agreement with the owners thereof acquire any generating station or any main transmission line from any such station on such terms as may be agreed (a). Power to acquire generating stations, etc.

(a) See s. 12 of the Electricity (Supply) Act, 1922, Vol. V., *post*, for a power to make agreements as to working of generating stations. For meanings of "generating station" and "main transmission line," see s. 36, *post*, p. 5268.

10. Where a joint electricity authority or any authorised undertakers (a) are authorised by order made after the passing of this Act to acquire or use any land for the purpose of a generating station (a), no person shall be entitled to restrain the use of the land for that purpose. Right to use for generating stations land acquired for that purpose.

(a) See definitions in s. 36, *post*, p. 5268.

11. Notwithstanding anything in any special Act or order in force at the passing of this Act, it shall not be lawful for any authority, company, or person to establish a new or extend (a) an existing generating station (b) or main transmission line (b) without the consent of the Electricity Commissioners (c) (which consent shall not be refused or made subject to compliance with conditions to which the authority, company, or person object, unless a local inquiry (d) has been held), but this restriction shall not apply to the establishment or extension of a private generating station: provided that, in the case of the establishment of a new private generating station, the owner thereof shall comply with any regulations made by the Electricity Commissioners as to the type of current, frequency, and pressure to be used; but such regulations shall be so framed as not to interfere with the economical and efficient working of the business for which the supply is generated: Restrictions on the establishment of new generating stations (a).

Provided that, in the case of a railway company using or proposing to use electricity for traction, and in the case of the owners of a dock undertaking regulated by Act of Parliament using or proposing to use electricity for the purposes of their undertaking, consent shall not be refused unless it is proved to the satisfaction of the Electricity Commissioners that a joint electricity authority or authorised undertakers are or will be willing and in a position to give the railway company or owners a supply of electricity, adequate in quantity and regularity to meet the present and prospective demand of the railway company or owners, at a cost not greater than would have been incurred by the railway company or owners in supplying themselves:

Provided also that—

- (a) where a group of persons carrying on or intending to carry on businesses in which large quantities of electricity are used for purposes other than for provision of mechanical power or light propose to establish a generating station for the purposes of such businesses; or
- (b) where a manufacturer, having a business in which electricity can be generated from energy derived from a process of manufacture carried on in his premises, proposes to establish a generating station for the purpose of supplying electricity not only for his own business but also to other manufacturers whose businesses are associated therewith:

the Electricity Commissioners may authorise the establishment, by or on behalf of those consumers or that manufacturer, of a generating station,

Section 11. subject to the condition that any surplus electricity generated beyond that required by those consumers or, as the case may be, by the business of that manufacturer or the associated businesses shall (if required by the Electricity Commissioners) be supplied to the joint electricity authority, or any authorised undertakers, at such prices as the Electricity Commissioners may think fit and proper, and may by order authorise the exercise of such other powers (including the breaking up of roads, railways, and tramways) as may be necessary for the purpose of such supply, and the generating station shall be treated for the purposes of this Act as though it were a private generating station.

(a) The substitution for existing plant of smaller but more efficient plant in a generating station is an extension of a "generating station" within s. 36, *post*, p. 5263, and requires the consent of the commissioners under this section (*Att.-Gen. v. Ealing Corp.*, [1924] 2 Ch. 545; 88 J. P. 153; 20 Digest 200, 15).

(b) See definition in s. 36, *post*, p. 5263.

(c) See s. 18 of the Electricity (Supply) Act, 1922, Vol. V., *post*, for conditions under which the restriction on generating stations and obligations to take supplies from same are not to apply. See also s. 25 of the Act of 1922, Vol. V., *post*, as to the power of persons not being undertakers to supply electricity. In giving consent under this section regard must be had to the provisions of the Electricity (Supply) Act, 1926, and the effect of any scheme or proposed scheme thereunder (see s. 18 (2) of that Act; Vol. V. and 7 Halsbury's Statutes 806). See *R. v. Electricity Commissioners, Ex parte Chester Corporation*, [1924] 2 K. B. 247; 104 J. P. 324; Digest Supp.

(d) As to local inquiries, see s. 83, *post*, p. 5262.

Powers of Joint Electricity Authorities (a).

Powers of joint electricity authorities in respect of the supply of electricity.

12.—(1) A joint electricity authority shall have power to supply electricity within their district subject to the following limitations, that is to say, the authority shall not supply electricity—

(a) in any area which for the time being forms part of the area of supply of any authorised distributors without the consent of those distributors, except to railway, canal, or inland navigation companies or authorities for the purposes of traction or haulage, or for lighting vehicles and vessels for the haulage or traction of which electricity is supplied, or for the purpose of charging or re-charging electric vehicles not running on rails; or

(b) in any part of the area of supply of a power company for any purpose for which the company are therein authorised to supply electricity, without the consent of the company, *except to the previous owner of a generating station which has been transferred to the joint electricity authority or for the purpose of charging or re-charging electric vehicles not running on rails* (b):

Provided that, where the authorised distributors or power company refuse or withhold their consent, the joint electricity authority may appeal to the Electricity Commissioners as to whether the consent is unreasonably refused or withheld, and the Board of Trade (c) on the recommendation of the Electricity Commissioners may dispense with such consent if in their opinion it is unreasonably refused or withheld, and the consent shall be deemed to be unreasonably refused or withheld if the authorised distributors or power company are not willing and in a position to give the requisite supply upon reasonable terms and within a reasonable time, and in considering what are reasonable terms and what is a reasonable time the Board of Trade (c) shall amongst other things have regard to the terms upon which and the time within which the joint electricity authority and the authorised distributors or power company are respectively willing and able to give the supply, and, where the authorised distributors or power company are themselves supplied by the joint electricity authority, the terms upon which they are so supplied, including the period of time for which such terms are to be binding (d).

(2) This Act shall, in relation to every joint electricity authority, be

deemed to be a special Act for the purposes of the Electric Lighting Acts (*e*), **Section 12.** and every joint electricity authority shall be deemed to be undertakers within the meaning of those Acts, and for the purposes of this section there shall be incorporated with this Act the provisions of the Schedule to the Electric Lighting (Clauses) Act, 1899 (*f*), subject to such exceptions and modifications as may be prescribed by the order constituting the joint electricity authority:

Provided that sections two and three of the Electric Lighting Act, 1888 (which relate to the purchase of undertakings by local authorities), shall not apply to the undertakings of joint electricity authorities.

(3) Subject to the limitations hereinbefore contained on the powers of a joint electricity authority to supply electricity, the Electricity Commissioners may by order, after such inquiry as they think fit, impose on any joint electricity authority an obligation to supply electricity in such circumstances within such areas, and on such terms and conditions as to price and otherwise as may be specified in the order (*g*).

(a) See the provision as to the mode of exercising their powers by joint electricity authorities contained in s. 15 of the Electricity (Supply) Act, 1922, Vol. V., *post*.

(b) The words in italics were deleted by s. 16 (1) of the Electricity (Supply) Act, 1922, Vol. V., *post*.

(c) Now the M. of T. See note (b) to s. 1, *ante*, p. 5243.

(d) The words in italics were deleted by s. 16 (1) of the Electricity (Supply) Act, 1922, and by the same sub-section the following proviso was inserted at the end of the sub-section in the text: Provided that, if in any particular part of the area of supply of a power company, the power company are not willing and in a position to supply electricity to any local authority, company or person who is prepared to enter into a binding contract with that power company to continue to receive and pay for a supply of electricity upon such terms and conditions (including the payment of a minimum annual sum) as will, in the opinion of the Electricity Commissioners, afford an adequate return to the power company, and is also (in the case of a company or person) prepared to give to the power company (if required by them so to do) security for the payment of all sums which may become due to the power company under the contract, then and in such case the Electricity Commissioners may, by special order under s. 26 of the principal Act, *post*, p. 5260, authorise a joint electricity authority to supply electricity in that particular part of the area of supply of the power company without the consent of the power company. In determining what terms and conditions will afford an adequate return to the power company, the Commissioners shall have regard to the following amongst other considerations: (i) The period for which the authority, company or person requiring the supply guarantees to take the supply; (ii) The amount of electricity and the maximum power required; (iii) The hours during which the power company can be called upon to give the supply; (iv) The capital expenditure in connection with the supply; and (v) To what extent capital expended in connection with the supply may become unproductive to the power company upon the discontinuance of the supply.

(e) These are the Electric Lighting Acts, 1882 to 1909 (s. 36, *post*, p. 5263). See these Acts at *ante*, pp. 4642, 4700, 5096.

(f) See this Act at *ante*, p. 4949.

(g) See the provision contained in s. 18 of the Electricity (Supply) Act, 1922, Vol. V., *post*, as to the limitation on the prices to be charged.

13.—(1) Any local authority being authorised distributors (*a*) may, with the consent of the Electricity Commissioners, agree with the joint electricity authority of the district in which the area of supply (*b*) of the local authority or any part thereof is situated for the transfer to the joint electricity authority of the whole or any part of the undertaking of the local authority within that district:

Provided that, where part of the area of supply of the local authority is situated in a locality which is not included in an electricity district, the powers of purchasing that part may, if the Electricity Commissioners consent, be exercised by a joint electricity authority within whose district any part of the area of supply is situated (*c*).

(2) Where under the Electric Lighting Acts, or under any order made thereunder or under any special or local Act, any right to purchase the

Transfer of undertakings to joint electricity authorities.

Section 13. whole or any part of the undertaking of any authorised distributors is vested in any local authority (including a county council), the right may, by any order under this Act constituting a joint electricity authority for the district comprising the area of the local authority, [or by any amending order under section seven of this Act] (d), be transferred to and vested in the joint electricity authority, subject to the order providing for adequate representation on the joint electricity authority of the local authority from whom the right is transferred, and, on any such right being so transferred, the order or Act conferring the right shall be construed accordingly, and any question as to the adequacy of such representation shall be determined by the Electricity Commissioners (e) :

Provided that, if the area of the local authority is situate partly in the district of one joint electricity authority and partly in that of another, the right shall be transferable to such one of those joint electricity authorities or divisible between them as the Electricity Commissioners may determine, and where part of such area is situate in a locality which is not included in an electricity district the right of purchasing that part may, if the Electricity Commissioners consent, be transferable to a joint electricity authority within whose district any part of such area is situate.

(3) Where any such right as aforesaid becomes exercisable before the date of the constitution of a joint electricity authority, the right shall not be exercised by the local authority without the consent of the Electricity Commissioners, and such consent may be given subject to such conditions as the Commissioners may think fit, and it shall be lawful for the local authority to comply with any conditions so imposed.

(4) A joint electricity authority with the consent of the Electricity Commissioners may at any time acquire the whole or any part of the undertaking of any authorised undertakers not being a local authority, by agreement, and it shall be lawful for any such undertakers to sell their undertaking or any part thereof to a joint electricity authority.

(a) See definition in s. 36, *post*, p. 5268.

(b) This expression has the same meaning as in the Electric Lighting Act, 1909 (s. 86). See s. 25 of the Act of 1909, *ante*, p. 5108.

(c) See with reference to the provisions of this sub-section, note (b) to s. 8, *ante*, p. 5246.

(d) The words in brackets were added by s. 50 and Sched. VI., Electricity (Supply) Act, 1926, Vol. V. and Halsbury's Statutes 821, 825.

(e) See with reference to this sub-section s. 7 of the Electric Lighting Act, 1909, *ante*, p. 5099, and see also s. 14 of the Electricity (Supply) Act, 1922, Vol. V., *post*.

14. [*Special provisions as to power companies*] (a).

(a) This section was repealed by s. 17 (3) of the Electricity (Supply) Act, 1922. See the substituted provisions in s. 17 (1), (2) of that Act, Vol. V., *post*.

Subsidiary
powers of joint
electricity
authorities.

15.—(1) The Board of Trade (a) on the representation of the Electricity Commissioners, may by order authorise any joint electricity authority or any authorised undertakers (b) to abstract water from any river, stream, canal, inland navigation or other source, and to do all such acts as may be necessary for the purpose of enabling the joint electricity authority or authorised undertakers to utilise and return the water so abstracted, subject to such conditions as may be specified in the order, but the Board shall not in any case make such an order until notice of their intention to make the order has been given by advertisement or otherwise as the Board may direct and an opportunity has been given to any person who appears to the Board to be affected of stating any objections he may have thereto, and such order may provide for the recovery in a summary manner of penalties for infringement of the order:

Provided that—

(a) where the source from which the water is to be abstracted is a canal, inland navigation, or harbour regulated by Act of

Section 15.

Parliament, or where any existing rights of riparian owners will be affected by the abstraction of the water, the order authorising the abstraction shall be a special order, and shall provide that the water not consumed shall, subject to any agreement to the contrary, be returned at a level not lower than that at which it was abstracted ; and

- (b) the order shall require that all water not consumed (and in no case less than ninety-five per centum of the water abstracted) shall be returned in a condition not less pure than when it was abstracted and at a temperature not higher than such as may be specified in the order (which temperature shall be fixed at such a degree as appears to the Board necessary to avoid injury to public health or to fisheries, if any, or in the case of a canal or inland navigation to the works thereof, or to vessels using the same, or to the trade or business carried on by any person using the same for the purposes of or in connection with his trade or business) ; and
- (c) no order shall be made authorising the abstraction of water from any dock regulated by Act of Parliament except with the consent of the owners thereof and subject to such terms and conditions as may be agreed.
- [(cc) No order authorising the abstraction of water from any reservoir or other works used by any statutory water undertaker for the purposes of the undertaking shall be made without the consent of such undertaker (which consent shall not be unreasonably refused) and if any question arises as to the reasonableness of any refusal or of the terms sought to be imposed as a condition of giving consent the question shall be referred to a single arbitrator nominated by the Lord Chief Justice, or in Scotland by the Lord President of the Court of Session, and in any such order there shall be inserted such provisions as the Minister of Health (or in the case of Scotland, the Scottish Board of Health) may consider proper for safeguarding the interests of the water consumers] (c) ; and
- (d) in any order authorising the abstraction of water from the Manchester Ship Canal there shall be inserted such provisions as the Board of Trade may consider adequate for preventing interference with the navigation of the canal.

(2) A joint electricity authority and any local authority, company, or person may, with the consent of the Electricity Commissioners, enter into arrangements for the utilisation, for the purposes of the joint electricity authority, of water power, waste heat, or other form of energy which the local authority, company, or person may be able to dispose of, or for the supply by the joint electricity authority of any form of energy other than electricity, and, where such an arrangement has been made, the joint electricity authority may be authorised by order (d) to exercise such powers (including the power to break up roads, railways, and tramways) as may be necessary for the purpose of conveying such energy :

Provided always that such joint electricity authority, local authority, company, or person shall in no case have the power to enter into arrangements for the supply by the joint electric authority of any form of energy, other than electricity, in any area or district within which any undertakers may be authorised by Parliament to supply such form of energy unless and until such undertakers consent thereto, and then only upon such terms and conditions as may be agreed upon with such undertakers.

(3) The purposes for which a joint electricity authority may be authorised to acquire compulsorily or use land under section one (e) of the Electric 9 Edw. 7, c. 34.

Section 15. Lighting Act, 1909, shall include the development of water-power for the generation of electricity.

(4) A joint electricity authority may, with the consent of the Electricity Commissioners, erect, maintain, alter, improve, and renew by-product plant with all necessary machinery and apparatus, and do all such acts as may be proper for working up and converting the residual products arising directly or indirectly from the generation of electricity :

Provided that, where it appears to the Electricity Commissioners that the establishment of any such by-product plant could properly be undertaken by any existing company, authority, or person, a joint electricity authority shall not establish such plant without first giving to such company, authority, or person an opportunity for so doing.

(a) By s. 39 (1), *post*, p. 5865, and an Order in Council made thereunder, the powers of the Board of Trade under this Act have passed to the Minister of Transport.

(b) See definition in s. 36, *post*, p. 5263.

(c) The words in brackets were added by s. 50 and Sched. VI., Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821, 825, to meet the decision in *Metropolitan Water Board v. Minister of Transport* (1925). 90 J. P. 52 ; Digest Supp. In that case it was held that an order of the Minister of Transport under this section might authorise the abstraction of water from a reservoir of the Board against the wishes of the Board. The amendment requires the consent of a statutory water undertaker to the making of an order authorising the abstraction of water from a reservoir, etc., of such an undertaker.

(d) See s. 32 (3), *post*, p. 5262, as amended by the Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 792, which provides that an order empowering the breaking up of streets, railways, and tramways, other than such as can be broken up under any order or special Acts relating to the particular joint electricity authority or undertakers, shall apply or incorporate the provisions of the Electric Lighting (Clauses) Act, 1899, *ante*, p. 4949, relating to the breaking up of streets, railways, and tramways. The amending provision dispenses with the necessity for a special order and a departmental order only will now be necessary.

(e) See this section at p. 5096, *ante*.

Compensation
for deprivation
of employment,

16. If after the eighth of May nineteen hundred and nineteen, and within five years from the date when *under this Act* (a) a transfer of the whole or any part of an undertaking has been effected, [or an authorised undertaker has ceased to operate or changed the method of operation of the whole or any part of an undertaking in pursuance of—

- (a) a scheme for the improvement of the supply of electricity in any district ; or
- (b) an agreement or arrangement between various authorised undertakers for the rendering of mutual assistance to one another] (*aa*)

any officer or servant who has, *before the said eighth day of May* (b), been regularly employed in or about the undertaking or any authorised undertaking (*bb*) proves to the satisfaction of a referee or a board of referees appointed by the Minister of Labour that *in consequence of this Act* (c) he—

- (i) has suffered loss of employment, or diminution of salary, wages or emoluments, otherwise than on grounds of misconduct, incapacity, or superannuation ; or
- (ii) has relinquished his employment in consequence of being required to perform duties such as were not analogous or were an unreasonable addition to those which *before the said eighth day of May* (b) he had been required to perform ; or
- (iii) has been placed in any worse position in respect to the conditions of his service (including tenure of office, remuneration, gratuities, pension, superannuation, sick or other fund, or any benefits or allowances, whether obtaining legally or by customary practice),

and the body to which the undertaking or part thereof was transferred, or, as the case may be, the authorised undertakers who are affected by the scheme or are parties to the agreement or arrangement, do not show to the satisfaction of the referee or board of referees that equivalent employment [was available on the like conditions as those obtaining with respect to him at the date of such

transfer, cessation of operation, or change in the method of operation as is hereinbefore mentioned] (*aa*) there shall be paid to him by that body or those undertakers, or such of them as the referee or board of referees may think just, such compensation as the referee or board of referees may award, including any expenses which the officer or servant necessarily incurs in removing to another locality (*d*):

Provided that such compensation shall, in the case of an officer employed on an annual salary, be based on but not exceed the amount which would have been payable to a person on abolition of office under the Acts and rules relating to His Majesty's Civil Service in force at the date of the passing of the Local Government Act, 1888, but, in computing the period of service of any officer, service under any authorised undertakers shall be reckoned as service under the authorised undertaker in whose employment he is at the time that he suffers such loss or diminution as is mentioned in this section; and, where any such officer or servant was temporarily absent from his employment whilst serving in or with His Majesty's Forces or the forces of the Allied or Associated Powers, or in any other employment of national importance during the present war, such service shall be reckoned as service under the authorised undertakers in whose employment he was immediately before and after such temporary absence.

(*a*) Sect. 21 (1) of the Electricity (Supply) Act, 1922, substituted the words "under or in consequence of this Act" for the words "under this Act." See the full terms of s. 21 (1), Vol. V. and 7 Halsbury's Statutes 788.

(*aa*) Words in square brackets substituted for the original, by the Electricity (Supply) Act, 1933 (26 Halsbury's Statutes 137).

(*b*) Words in italics repealed by the Electricity (Supply) Act, 1928, s. 1, Vol. V. and 7 Halsbury's Statutes 826.

(*bb*) The officer need not have been employed in a transferred undertaking (*Stimpson v. Portsmouth Corporation*, [1939] 2 K. B. 227; [1939] 2 All E. R. 411; 103 J. P. 195; Digest Supp.).

(*c*) Sect. 21 (1) of the Electricity (Supply) Act, 1922, substituted the words "in consequence of any such transfer, scheme, agreement, or arrangement," for the words "in consequence of this Act." And the words "cessation of operation or change in the method of operation" were in turn substituted for the words "scheme, agreement, or arrangement" by Act cited in note (*aa*), *supra*. See the full terms of s. 21 (1), Vol. V., *post*. In a claim under this section as amended it was held that the referee appointed by the Minister of Labour is in the position of an arbitrator and has power to determine whether the transfer giving rise to the claim has been effected "under" this Act. If the claimant fails to satisfy the referee that the transfer was "under" this Act, the question whether it was "in consequence of" this Act must be determined by the Commissioners under the proviso to s. 21, Electricity (Supply) Act, 1922 (*R. v. Minister of Labour*, [1924] 2 K. B. 210; 88 J. P. 131; 20 Digest 216, 103). This defect is now avoided by the amendment of the proviso to s. 21 of the 1922 Act by s. 50 and Sched. VI. of the Electricity (Supply) Act, 1926. The proviso as amended (*q.v.*, Vol. V., *post*) provides that any question as to whether a transfer scheme agreement or arrangement was made under or in consequence of this Act is to be determined by the Commissioners.

(*d*) This section applies when a company is an authorised undertaker at the time when the claim arises, and if the claimant is employed at a weekly salary the compensation must be calculated accordingly (*Naylor v. Peacehaven Electric Light and Power Co., Ltd.* (1931), 47 T. L. R. 535; Digest Supp.).

17. A joint electricity authority before incurring any capital expenditure above such amount as the Electricity Commissioners may prescribe shall submit for approval to the Electricity Commissioners such details, plans, and estimates with respect to the proposed expenditure as the Electricity Commissioners may require.

Submission of plans, etc., with respect to capital expenditure.

Transitory Provisions.

18.—(1) It shall be lawful for the Board of Trade (*a*), after consultation with the Electricity Commissioners, at any time after an electricity district has been provisionally determined and before the establishment of a joint electricity authority for the district, and for two years after the establishment

Power of Board of Trade (*a*) to construct interim works.

Section 18. of any such authority, with the consent of such authority, to construct any generating station, main transmission line, or other works, and exercise any other powers which a joint electricity authority can or can be authorised to exercise under this Act;

Provided that, where the Board of Trade (a) propose to construct a generating station before the establishment of a joint electricity authority for any district, the Electricity Commissioners shall consult with the county councils, local authorities, and authorised undertakers any part of whose county, district, or area of supply is within the electricity district as provisionally determined as to the site of the proposed station.

(2) The Treasury may issue to the Board of Trade (a) out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, any sums not exceeding in the aggregate twenty million pounds, required for the construction of any such works, or the acquisition of land for that purpose, or required for providing working capital for such works, on such terms and conditions as to interest, repayment, and otherwise as the Treasury may think fit.

The Treasury may, if they think fit, at any time for the purpose of providing for the issue of sums out of the Consolidated Fund under this section or for the repayment to that fund of all or any part of the sums so issued, or for the paying off of any security so issued under this subsection so far as that payment is not otherwise provided for, borrow money by means of the issue of Exchequer Bonds, and all sums so borrowed shall be paid into the Exchequer.

Any sums received on account of the payment of principal or interest on the advances made to the Board of Trade (a) shall be paid into the Exchequer, but any part of sums so paid which represents the repayment of principal shall be transferred to the National Debt Commissioners and applied by them as and when they think fit in purchasing or paying off as occasion requires any securities issued under this subsection, and sums so applied shall be invested and accumulated by the said Commissioners.

The principal of and interest on any Exchequer Bonds issued under this subsection shall be charged on and payable out of the Consolidated Fund of the United Kingdom or the growing produce thereof.

(3) At the expiration of two years after the establishment of a joint electricity authority for any district, or at any earlier time which may be agreed on between the Board of Trade (a) and the joint electricity authority, any generating station, main transmission lines and other works, and any land acquired for the purpose thereof for the Board of Trade (a) under this section which are situate within the electricity district, shall vest in that authority, subject to the payment by the joint electricity authority to the Board of Trade (a) of such sum as may be certified by the Treasury to be sufficient to repay the advances made by them to the Board of Trade (a) (including the cost of redeeming any of the securities issued under the preceding subsection) in respect of the construction of and provision of working capital for such works, and the acquisition of such lands, and any interest thereon which may be outstanding, after deducting the amount applied or applicable towards the repayment of the sums issued to the Board of Trade (a) for defraying that cost.

(4) The prices, fixed by the Board of Trade (a) for electricity supplied by them from generating stations established under this section, shall be such that their receipts therefrom will be sufficient to cover their expenditure on income account (including interest and sinking fund charges in respect of such advances as aforesaid) with such margin as the Board may think fit.

(a) By s. 39 (1), *post*, p. 5265, and an Order in Council made thereunder the powers of the Board of Trade under this Act have passed to the Minister of Transport.

Section 19.

Power of authorised undertakers to render mutual assistance to one another.

19.—(1) During the period between the passing of this Act and the establishment of a joint electricity authority for a district, any two or more of the authorised undertakers (a) within the locality may, with the approval of the Electricity Commissioners (b), and if so required by the Electricity Commissioners shall, enter into and carry into effect arrangements for mutual assistance of the one by the other, with regard to all or any of the following purposes:—

- (a) The giving and taking of a supply of electricity and the distribution and supply of the electricity so taken :
- (b) The management and working of the generating stations or any part of the several undertakings of the undertakers who are parties to any such arrangement :
- (c) The provision of capital required for carrying into effect, and the appropriation and division of receipts arising under, any such arrangement :
- (d) Any matters or things incidental or connected with any of the purposes aforesaid :

and the arrangement shall be made on such terms and conditions as may be agreed, or, if the arrangement is made in pursuance of a requirement by the Electricity Commissioners, on such terms and conditions as in default of agreement may be settled by those Commissioners :

Provided that the authorised undertakers entering into any such arrangement shall remain and be subject to all and the same obligations and liabilities to all persons not being parties to the arrangement as they would have been subject to if no such arrangement had been entered into.

(2) Where such an arrangement has been made, any authorised undertakers who are parties to the arrangement may be authorised by order to exercise such powers (including the power to break up roads, railways, and tramways) as may be necessary for the purpose of carrying the arrangement into effect (c).

(3) The provision of capital required for giving effect to any such arrangement, and the payment of interest on any such capital raised for the purpose of effecting intercommunication or development of supply in bulk, whilst the expenditure remains unremunerative, shall be purposes for which a local authority may borrow under the Electric Lighting Acts.

(a) See definition in s. 36, *post*, p. 5263.

(b) The Commissioners have jurisdiction to refuse to approve an agreement for mutual assistance between authorised undertakers, if the policy embodied in such agreement cuts across the line of policy which the Commissioners propose to adopt under the Act as to the consolidation of areas (*R. v. Electricity Commissioners, Ex parte Ealing Borough Council* (1922), 86 J. P. 191 ; 20 Digest 198, 2). In determining whether or not to approve an agreement under this section the Commissioners must have regard to the provisions of the Electricity (Supply) Act, 1926, and the effect of any scheme or proposed scheme thereunder (s. 18 (2), Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 806).

(c) See note (d) under s. 15 (2), *ante*, p. 5251.

Amendments of Electric Lighting Acts.

20. There shall be transferred to the Electricity Commissioners the powers of the Minister of Health and the Secretary for Scotland and the London County Council with respect to the sanctioning of borrowing by local authorities under the Electric Lighting Acts, or under any special Act or order relating to the supply of electricity, but in exercising the powers so transferred the Electricity Commissioners shall act in consultation with the Department or Council from which the powers were transferred (a).

Transfer of powers of certain departments.

(a) As to the sanctions hitherto required for borrowing, see s. 8 of the Electric Lighting Act, 1882, *ante*, p. 4648, and the notes thereto. In March, 1924, the Commissioners issued a memorandum of procedure under this section. The memorandum is set out at *ante*, p. 2663.

Section 21.

Overhead wires.

21. Where the consent of the Board of Trade (*a*) is obtained to the placing of any electric line above ground in any case, the consent of the local authority [(including a county council)] (*b*) shall not be required, anything in the Electric Lighting Acts, or in any order or special Act relating to the undertaking to the contrary notwithstanding, but the Board of Trade (*a*) before giving their consent shall give the local authority [and (where it is proposed to place the line along or across any county bridge or any [county road] vested in a county council) the county council] (*c*) an opportunity of being heard (*c*).

(*a*) See note (*a*) to s. 1, *ante*, p. 5243.

(*b*) The words in brackets were inserted by s. 50 and Sched. VI., Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821, 825. The amendment obviates the necessity for obtaining the consent of the county council where such consent would have been necessary, but gives the county council in the circumstances prescribed a right to be heard in objection.

The words "county road" are substituted for "main road" in consequence of L. G. A., 1929, s. 29 (1), Vol. V. and 10 Halsbury's Statutes 903.

(*c*) See as to consent of local authority, s. 14 of the Electric Lighting Act, 1882, *ante*, p. 4652, and clause 10 (*b*) of the Schedule to the Electric Lighting (Clauses) Act, 1899, *ante*, p. 4954. The Minister in determining whether to give or withhold consent must have regard to the provisions of the Electricity (Supply) Act, 1926, and the effect of any scheme or proposed scheme thereunder (s. 18 (2), Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 806). An undertaker may now proceed under this and the following section simultaneously without waiting to obtain the consent of the Minister first (s. 44 (1), Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 818).

Wayleaves.

22.—(1) A joint electricity authority or any authorised undertakers (*a*) may place any electric line below ground across any land, and above ground across any land other than land covered by buildings or used as a garden or pleasure ground in cases where the placing of such lines above ground is otherwise lawful, and where any line has been so placed across any land the joint electricity authority or undertakers may enter on the land for the purpose of repairing or altering the line (*b*) :

Provided that, before placing any such line across any land, the joint electricity authority or undertakers shall serve on the owner and occupier of the land notice of their intention, together with a description of the nature and position of the lines proposed to be so placed; and if, within twenty-one days after the service of the notice, the owner and occupier fail to give their consent or attach to their consent any terms or conditions or stipulations to which the joint electricity authority or the undertakers object, it shall not be lawful to place the line across that land without the consent of the Board of Trade (*c*); and the Board of Trade (*c*) may, if after giving all parties concerned an opportunity of being heard they think it just, give their consent (*d*) either unconditionally or subject to such terms, conditions, and stipulations as they think just; and in deciding whether to give or withhold their consent, or to impose any terms, conditions, or stipulations (including the carrying of any portion of the line underground) the Board shall, among other considerations, have regard to the effect, if any, on the amenities or value of the land of the placing of the line in the manner proposed.

(2) The power of placing lines across land conferred by this section shall include the power of placing a line across or along any railway, canal, inland navigation, dock or harbour, subject to the rights of the owners thereof and to the following conditions:—

(*a*) In respect of any electric lines placed or proposed to be placed across any line of railway from side to side thereof sections fifteen, sixteen, nineteen, twenty, and seventy-seven of the schedule to the Electric Lighting (Clauses) Act, 1899, shall, without prejudice to any protection given to the railway company by the Electric Lighting Acts

and this Act, apply as though the said electric lines were placed or proposed to be placed in accordance with powers contained in a special order as defined in the Electric Lighting (Clauses) Act, 1899 (e):

Section 22.

(b) In respect of any electric lines placed or proposed to be placed across any canal or inland navigation from side to side thereof, whether by being carried above or below ground, sections fifteen, nineteen, and seventy-seven of the schedule to the Electric Lighting (Clauses) Act, 1899, shall, without prejudice to any protection given to the owners of the canal by the Electric Lighting Acts and this Act, apply as though the said electric lines were placed in accordance with powers contained in a special order, as defined in the Electric Lighting (Clauses) Act, 1899 (e):

(c) In respect of any electric lines placed or proposed to be placed over or upon or under any line of railway along its course, the provisions contained in the proviso to subsection (1) of this section shall not apply, and in lieu thereof the following conditions shall apply:—

(i) Failing agreement between the joint electricity authority or authorised undertakers proposing to place such electric lines and the railway company, the joint electricity authority or authorised undertakers may apply to the Board of Trade (f) who may decide either that the lines shall not be so placed or may refer the question to the Railway and Canal Commission, and that Commission may, after an inquiry, make an order for the placing of the electric lines, subject to such pecuniary terms as the Commission think just, or refusing to allow such lines to be placed, and any such inquiry may be held by any one or more of the members of the Commission or by an officer appointed by the Commission for the purpose, and Parts I. and IV. of the Railway and Canal Traffic Act, 1888 (g) (except the sections relating to appeals), shall apply as far as applicable to any such inquiry, and any officer appointed to hold the inquiry shall have power to administer an oath;

51 & 52 Vict.
c. 25.

(ii) The joint electricity authority or authorised undertakers shall, upon receiving notice in writing from the railway company, remove or alter within a reasonable time, and to the reasonable satisfaction of the railway company, any such electric lines which shall interfere with the existing or any proposed works of the railway company or the traffic thereon: Provided that, if within twenty-one days after receipt of such notice the joint electricity authority or authorised undertakers object to the removal or alteration required by such notice, a difference shall be deemed to have arisen, which shall be referred to and determined by the Railway and Canal Commission;

(iii) Save as herein provided, sections fifteen, sixteen, nineteen, twenty, and seventy-seven of the schedule to the Electric Lighting (Clauses) Act, 1899, shall, without prejudice to any protection given to the railway company by the Electric Lighting Acts and by this Act, apply as though the said electric lines were placed in accordance with powers contained in a special order as defined in the Electric Lighting (Clauses) Act, 1899 (e):

(d) In respect of any electric lines placed or proposed to be placed over or upon or under any canal or inland navigation along its course, the provisions contained in the proviso to subsection (1) of this

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section shall not apply, and in lieu thereof the following conditions shall apply:—

- (i) The provisions of paragraph (c) (i) and (c) (ii) of this subsection shall apply as in the case of railways and for that purpose the expression "railway company" shall mean the owners of the canal or inland navigation:
- (ii) Save as herein provided, sections fifteen, sixteen, nineteen, and seventy-seven of the schedule to the Electric Lighting (Clauses) Act, 1899, shall, without prejudice to any protection given to the owners of canals by the Electric Lighting Acts and this Act, apply as though the said electric lines were placed in accordance with powers contained in a special order as defined in the Electric Lighting (Clauses) Act, 1899 (h):
- (e) No electric line shall be placed in the tunnels of any tube railway within the Metropolitan Police area, except with the consent of the company owning such railway:
- (f) In respect of any electric lines placed or proposed to be placed across any lands or works forming part of any dock or harbour undertaking regulated by Act of Parliament, whether by being carried above ground or below ground, sections fifteen, sixteen, seventeen, nineteen, and seventy-seven of the schedule to the Electric Lighting (Clauses) Act, 1899, shall, without prejudice to any protection given to the authority owning or managing the undertaking by the Electric Lighting Acts and this Act, apply as though the said electric lines were placed in accordance with powers contained in a special order as defined in the Electric Lighting (Clauses) Act, 1899 (h):
- (g) The sections of the schedule to the Electric Lighting (Clauses) Act, 1899, by this subsection applied to canals, inland navigations, docks and harbours, and lands or works forming part thereof, shall apply thereto as if references in those sections to streets and persons liable to repair streets and to canals and canal companies included, respectively, canals, inland navigations, docks and harbours, and lands and works forming part of a dock or harbour, and the authority owning or managing the same.
- (3) For the purposes of this section, any company or body or person entitled by virtue of any Act of Parliament to receive tolls or dues in respect of the navigation on or use of any canal, inland navigation, dock or harbour shall be deemed to be owners of such canal, inland navigation, dock or harbour.
- (4) Section fourteen of the schedule to the Electric Lighting (Clauses) Act, 1899 (i), so far as it relates to the Postmaster-General, shall be incorporated with this section, and shall apply to the execution of any works which will involve the placing of lines across or along any land, whether below ground or above ground, under this section in like manner as it applies to the execution of works which will involve the placing of lines in, under, along, or across any street or public bridge.
- (5) Nothing in this section shall prejudice or affect the rights of the Postmaster-General in relation to railways, canals, docks, and harbours under the Telegraph Acts, 1863 to 1916, or any agreement or award made thereunder, or shall operate in such a manner as to interfere with or involve additional expense in the exercise of any such rights.
- (6) A notice under this section may be served on the owner or occupier of any land by delivering it to him, or by leaving it or forwarding it by post addressed to him at his usual or last known place of abode, and may be addressed by the description of the owner or occupier of the lands (naming them) without further name or description.

**Note to
Section 22.**

- (a) See definition in s. 36, *post*, p. 5263.
- (b) Sub-sect. (1) in the text is an enabling section, and does not affect the powers which the undertakers have under the Electric Lighting Act, 1882, *ante*, p. 4642 (incorporating ss. 6 and 7 of the Gasworks Clauses Act, 1847, *ante*, p. 4165), to do necessary works in a street without the consent of the owner of the subsoil (*Porter v. Ipswich Corpn.*, [1922] 2 K. B. 145; 20 Digest 201, 20). See s. 11 of the Electricity (Supply) Act, 1922, Vol. V., *post*, for a power to continue wayleaves, which could have been obtained under the provisions of the section in the text. See also s. 34, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 813, which enables authorised undertakers to lop trees and hedges obstructing electric lines. Proceedings may now be taken concurrently under this and the preceding section (s. 44 (1), Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 818).
- (c) See note (a) to s. 18, *ante*, p. 5253.
- (d) In determining whether to give or withhold consent, the Minister must have regard to the provisions of the Electricity (Supply) Act, 1926, and the effect of any scheme or proposed scheme thereunder (s. 18 (2) Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 806). He must also take into consideration recommendations of the Minister of Works and Planning as to ancient monuments which might be prejudicially affected by the overhead lines (s. 44 (3), Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 818). The "terms, conditions, and stipulations" subject to which the M. of T. may give this consent do not include a power to impose pecuniary compensation (*West Midlands Joint Electricity Authority v. Pitt, Minister of Transport v. Same*, [1932] 2 K. B. 1; 96 J. P. 159; Digest Supp.).
- Where supports have been erected under this section, the undertakers are to be deemed persons having an interest in the land on which the supports are erected for the purposes of s. 8, Mines (Working Facilities and Support) Act, 1923 (12 Halsbury's Statutes 187) (s. 44 (2), Electricity (Supply) Act, 1926).
- (e) See the definition in Electric Lighting (Clauses) Act, 1899, Sched., r. 1, *ante*, p. 4049.
- (f) See note (a) to s. 18, *ante*, p. 5253.
- (g) See this Act at p. 4705, *ante*.
- (h) See the definition in Electric Lighting (Clauses) Act, 1899, Sched., r. 1, *ante*, p. 4049.
- (i) See this section, *ante*, p. 4956.

23.—(1) A joint electricity authority and any local authority authorised by special Act or by order to supply electricity may provide, let for hire, and in respect thereof may connect, repair, maintain and remove (but shall not, unless expressly authorised to do so by the special Act or order, manufacture or sell) electric lines, fittings, apparatus and appliances for lighting, heating and motive power and for all other purposes for which electricity can or may be used, and with respect thereto may demand and take such remuneration or rents and charges, and make such terms and conditions, as may be agreed upon (a). Supply of apparatus.

(2) Any electric lines, fittings, apparatus, and appliances provided by or on behalf of any authorised distributors (b) on consumers' premises either before or after the passing of this Act, and any lands, buildings, or works held by them in connection therewith shall be deemed to form part of the undertaking authorised by the special Act or order relating to such authorised distributors.

(a) As to the construction of this sub-section, see *Att.-Gen. v. Liverpool Corporation*, [1922] 1 Ch. 211; 20 Digest 199, 11. See also s. 43, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 819, which authorises joint electricity and local authorities to sell electrical fittings, appliances, etc. As to including in a fixed or service charge for electricity, rent or hire-purchase instalments on fittings, etc., leased or sold, see s. 42, Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 817.

(b) See definition in s. 36, *post*, p. 5263.

24. The Electricity Commissioners may require any authorised undertakers to amend or alter the type of current, frequency or pressure employed by them in their undertaking, and the execution of the works necessary to comply with such an order shall be a purpose for which a local authority may borrow under the Electric Lighting Acts: Provided that this section shall not apply to electricity generated at a railway generating station existing at the passing of this Act, and that, if on appeal by any authorised undertakers, the Board of Trade (a) are satisfied that compliance with the order Alteration of type of current, etc.

Section 24. would entail unreasonable expense, the Board of Trade (a) may direct that the order shall not apply to those undertakers, or apply only subject to such conditions as the Board of Trade (a) may prescribe (b).

(a) See note (a) to s. 18, *ante*, p. 5253.

(b) The powers of the Commissioners under this section will cease to be exercisable in any area in respect of which a scheme under the Electricity (Supply) Act, 1926, has come into force (s. 9 (6), Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 800).

Amendment of
s. 26 of Act of
1882.
45 & 46 Vict.
c. 56.

25. Section twenty-six of the Electric Lighting Act, 1882 (a) (which contains provisions for the protection of the Postmaster-General), shall have effect as if the words "or the laying of connections with mains where the direction of the electric lines so laid down crosses the line of the Postmaster-General at right angles at the point of shortest distance, and continues the same for a distance of six feet on each side of such point" were omitted, and as if for the words "not more than twenty-eight nor less than seven clear days" there were substituted the words "one month, or, in the case of the laying of service lines to consumers' premises, seven clear days."

(a) See this section at p. 4656, *ante*.

Substitution of
special for
provisional
orders.

26. Anything which under the Electric Lighting Acts may be effected by a provisional order confirmed by Parliament may be effected by a special order (a) made by the Electricity Commissioners and confirmed by the Board of Trade (b) under and in accordance with the provisions of this Act, or by an order establishing a joint electricity authority under this Act (c), and references in those Acts and the Electric Lighting (Clauses) Act, 1899, to provisional orders shall be construed as including references to such special orders and orders as aforesaid, except that the paragraphs numbered (1) to (4) of section four of the Electric Lighting Act, 1882 (d), shall not apply to such special orders as aforesaid, and any provisional order made under the Electric Lighting Acts and confirmed by Parliament may be amended or revoked by any such special order or order as aforesaid:

Provided that a special order made in pursuance of the powers conferred by this section shall be laid before each House of Parliament, and shall not come into force unless and until approved, either with or without modifications, by a resolution passed by each such House.

(a) As to special orders, see s. 35 (1), (2), *post*, p. 5263.

(b) See note (a) to s. 18, *ante*, p. 5253.

(c) See *hereon* ss. 6 and 7, *ante*, pp. 5245—6.

(d) These relate to notice of application for a provisional order and its confirmation by Parliament. See the section set out, *ante*, p. 4645.

Power to re-
quire accounts,
statistics, and
returns.

27. It shall be the duty of joint electricity authorities and authorised undertakers to furnish to the Electricity Commissioners at such times and in such form and manner as the Commissioners may direct such accounts, statistics, and returns as they may require for the purposes of their powers and duties under this Act.

Financial Provisions (a).

Revenue and
expenditure of
joint electricity
authorities.

28.—(1) Every joint electricity authority shall establish a fund to which all receipts by the authority shall be carried, and out of which all payments by the authority shall be made.

(2) Every joint electricity authority shall annually, at such time as the Electricity Commissioners may fix, submit to the Electricity Commissioners such a statement of income and expenditure on revenue account as the Electricity Commissioners may require.

(3) The accounts of every joint electricity authority and their officers shall be audited by the auditors appointed by the Electricity Commissioners, and the audit shall be conducted in accordance with such regulations as may be prescribed by the Electricity Commissioners, and the regulations may

apply with the necessary modifications the provisions relating to the accounts and audit of accounts of county councils and their officers. **Section 28.**

(4) Every joint electricity authority shall, annually at such date and in such form as the Electricity Commissioners may prescribe, make to the Electricity Commissioners a report of their proceedings during the preceding year.

(a) See the borrowing powers conferred upon joint electricity authorities by s. 1 and the following sections of the Electricity (Supply) Act, 1922, Vol. V., *post*.

29.—(1) The Electricity Commissioners shall, at the beginning of each financial year, prepare an estimate of their receipts and expenditure during the year, and submit it for approval by the Board of Trade (a). Expenses of Electricity Commissioners.

(2) The Electricity Commissioners shall apportion the amount by which the estimated expenses so approved exceed the estimated receipts so approved amongst the several joint electricity authorities and authorised undertakers within the United Kingdom in proportion to the number of units of electricity generated by or on behalf of those authorities and undertakers respectively in the preceding year; and every such authority or undertaker shall, on demand from the Electricity Commissioners, pay to them as a contribution towards their expenses the sum so apportioned:—

Provided that, during the first two years after the passing of this Act, the amount of such excess shall be paid out of moneys provided by Parliament, but such payments shall be treated as advances and shall be repaid, with interest at such rate as the Treasury may fix, by the Commissioners by equal annual instalments in the next three succeeding years.

(3) All sums received by the Commissioners shall be paid into a separate fund (b), and out of that fund the salaries, remuneration, pensions and gratuities of the Commissioners, their secretary, officers, and servants and all expenses incurred by the Commissioners shall be paid, and the Treasury may determine that that fund shall be a public fund within the meaning of the Superannuation Act, 1892.

(a) See note (a) to s. 18, *ante*, p. 5253.

(b) Fees taken by a meter examiner under the Electricity Supply (Meters) Act, 1936, may be payable into this fund (see *ibid.*, s. 1 (3), Vol. V. and 29 Halsbury's Statutes 133).

30. Subject to the consent of the Electricity Commissioners, joint electricity authorities or any authorised undertakers may, out of the revenue of their undertakings, pay reasonable subscriptions, whether annual or otherwise, to the funds of any association formed for the purpose of consultation as to their common interests and the discussion of matters relating to the supply of electricity, and to the funds of any recognised association conducted on a non-profit earning basis for developing the use of electricity, and may purchase reports of the proceedings of any conferences or meetings, and may pay the reasonable expenses of attendance of any members or officers of the joint electricity authority or undertaker at conferences or meetings of the said association or any of them. Subscription to associations.

General

31. Section four of the Conspiracy and Protection of Property Act, 1875 (a) (which relates to breaches of contract by persons employed in the supply of gas or water), shall extend to persons employed by a joint electricity authority or by any authorised undertakers in like manner as it applies to persons mentioned in that section, with the substitution of references to electricity for the references to gas or water. Application to electricity of 88 & 89 Vict. c. 86, s. 4.

(a) See this section at p. 4543, *ante*. See also the provisions of the Emergency Powers Act, 1920 (3 Halsbury's Statutes 501).

32.—(1) Where under this Act a joint electricity authority are authorised to enter into an agreement or arrangement with any authorised undertakers Provisions as to agreements and arrangements under this Act.

Section 32. or any other authority, company, or person for any purpose, it shall be lawful for those undertakers, authority, company, or person to enter into and carry into effect such an agreement or arrangement.

(2) Where a local authority, as authorised undertakers, enter into an agreement or arrangement with a joint electricity authority or any other authorised undertakers in pursuance of this Act, any expenses incurred by the local authority in carrying the agreement or arrangement into effect shall be deemed to be expenses incurred by them under or in pursuance of the Electric Lighting Acts and the provisions of section seven and section eight of the Electric Lighting Act, 1882 (*a*), shall apply accordingly and any moneys received by any such local authority under any such agreement or arrangement shall be deemed to be moneys received by the local authority in respect of their undertaking.

(3) Where by this Act an order may be made conferring on a joint electricity authority or authorised undertakers or other persons such powers as may be necessary for carrying into effect an agreement or arrangement entered into by them under this Act or for doing anything which under this Act they are authorised to do, and amongst the powers to be conferred by the order are included powers of breaking up streets, railways and tramways other than such as can be broken up under any order or special Act relating to the joint electricity authority or undertakers, the order, *unless it is an order made under section seven of this Act, shall be a special order* (*b*), and shall apply or incorporate the provisions of the Electric Lighting Acts and the Electric Lighting (Clauses) Act, 1899, relating to breaking up of streets, railways, and tramways.

(*a*) See these sections at *ante*, pp. 4647—8.

(*b*) The words in italics were repealed by s. 50 and Sched. VI., Electricity (Supply) Act, 1926, Vol. V. and 7 Halsbury's Statutes 821, 825. The effect of the amendment is to do away with the necessity for special orders authorising agreements involving the breaking up of streets, etc. The authorisation will in future be by departmental order.

Power to hold
inquiries.

33.—(1) The Electricity Commissioners may hold, or cause to be held, such inquiries as they consider necessary or desirable for the purposes of this Act, and the Commissioners, and, if authorised by the Commissioners, the person appointed to hold any such inquiry may by order require any person, subject to the payment or tender of the reasonable expenses of his attendance, to attend as a witness and give evidence or to produce documents at the inquiry, and, if any person fails without reasonable excuse to comply with any of the provisions of any such order, he shall be liable on summary conviction to a fine not exceeding five pounds, and the Commissioners or person holding the inquiry shall have power to take evidence on oath and for that purpose to administer oaths.

(2) Notices of inquiries may be given and published in accordance with such general or special directions as the Commissioners may give.

Power to make
rules.

34.—(1) The Board of Trade (*a*) and the Electricity Commissioners may respectively make rules (*b*) in relation to applications and other proceedings before them under this Act, and to the payments to be made in respect thereof, and to the publication of notices and advertisements and the manner in which and the time within which representations or objections with reference to any application or other proceeding are to be made, and to the holding of inquiries in such cases as they may think it advisable, and to the costs of such inquiries, and to any other matters arising in relation to their powers and duties under this Act.

(2) Any rules made in pursuance of this section shall be laid before Parliament as soon as may be after they are made, and shall have the same effect as if enacted in this Act (*c*).

**Note to
Section 34.**

(a) See note (a) to s. 18, *ante*, p. 5253.

(b) See the Rules at *ante*, pp. 2619 *et seq.*

(c) Where a statute authorised the making of rules and orders, and declared that they should have effect as if enacted in the Act, but should be laid before Parliament, and if either House so resolved within 60 days should be annulled, it was held that a court could not consider whether orders so made and not annulled were *ultra vires* (*Patent Agents' Institute v. Lockwood*, [1894] A. C. 347; 42 Digest 613, 139); and see *Re London and General Bank* (1894), 38 Sol. Jo. 682. The decision in the *Patent Agents' Institute Case* was distinguished in *Waterford Corporation v. Murphy*, [1920] 2 I. R. 165, which dealt with by-laws whose scope was limited, and it was held that the limit has been exceeded. See also *per* YOUNGER, L.J., in *R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1920), Ltd.*, [1924] 1 K. B. 171, at p. 212; 88 J. P. 13, at p. 19; Digest Supp.; *Minister of Health v. R., Ex parte Yaffe*, [1931] A. C. 494; *sub nom. R. v. Minister of Health, Ex parte Yaffe*, 95 J. P. 125; Digest Supp.

Where an Act declared that an order made under it shall be final and have effect as if enacted in the Act, and that confirmation by the L. G. B. or M. of H. shall be conclusive evidence that the requirements of the Act have been complied with, and that the Order has been duly made and is within the powers of the Act, the courts cannot interfere if some requirement has not been complied with (*Ex parte Ringer* (1909), 73 J. P. 436; 25 T. L. R. 718; 42 Digest 2, 1; *R. (Eustace) v. Local Government Board* (1910), 44 I. L. T. 176, not following *R. (Whyte) v. Local Government Board* (1909), I. L. T. 216); and see *R. v. L. G. B. for Ireland*, [1917] 2 I. R. 454. Where a resolution of the local authority did not require the confirmation of the department and the Act provided that the effect should be as if the order had been confirmed so that the resolution was to have effect as if enacted in the Act and to be deemed to be duly made and within the powers of the Act, the court refused to give any decision on the law and relied on the facts of the case (*Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559).

35.—(1) A special order made under this Act by the Electricity Commissioners shall not have any effect unless and until confirmed by the Board of Trade (a). Procedure for making special orders.

(2) Sections eighty and eighty-one of the Factory and Workshop Act, 1901, 1 Edw. 7, c. 22 relating to the making of regulations under that Act, as set out and adapted in the Schedule to this Act, shall apply to the confirmation of special orders made under this Act (b).

(3) Before any special order, other than a special order which is not valid unless approved by a resolution passed by each House of Parliament, comes into force it shall be laid before each House of Parliament for a period not less than thirty days during which that House is sitting, and, if either of those Houses before the expiration of those thirty days presents an Address to His Majesty against the order or any part thereof, no further proceedings shall be taken thereon without prejudice to the making of any new order.

(4) A special order so made and confirmed as aforesaid shall have effect as if enacted in this Act (c).

(a) See note (a) to s. 18, *ante*, p. 5253.

(b) Where, however, the making of the special order is unopposed, see now Public Works Facilities Act, 1930, s. 5, Vol. V. and 23 Halsbury's Statutes 775.

(c) See note (c) to s. 34, *supra*.

36. In this Act, unless the context otherwise requires—

The expression "Electric Lighting Acts" means the Electric Lighting Acts, 1882 to 1909 (a);

The expression "authorised undertakers" includes authorised distributors and power companies:

The expression "authorised distributors" means any local authority, company or person, authorised to supply electricity within any area of supply, but does not include a power company except in relation to any supply given by the company under an order made under the Electric Lighting Acts:

The expression "power company" means any company or person (other than a railway company being the owners or lessees of a railway generating station) authorised by special Act to supply electricity to

Section 36.

authorised distributors and lighting authorities or to other persons for power purposes, whether with or without a subsidiary power to supply electricity for lighting purposes :

The expression "lighting authority" means any authority, company or person, authorised by any public general or special Act, to undertake or contract for the lighting of streets, bridges or public places :

The expression "generating station" means any station for generating electricity, including any buildings and plant used for the purpose, and the site thereof, and a site intended to be used for a generating station, but does not include any station for transforming, converting, or distributing electricity :

The expression "railway generating station" means a station for generating electricity for use solely or mainly by a railway company for the purposes of their undertaking :

The expression "private generating station" means a generating station for the generation of electricity for use solely or mainly on the owner's or joint owners' premises or for the purposes of his or their undertaking or undertakings, or, where the owner is a subsidiary company, solely or mainly on the premises or for the purposes of the undertaking of the principal company, in any case where the undertaking of the owner or the principal company is not an undertaking belonging to authorised undertakers or to a railway, tramway, canal, inland navigation, harbour or other undertaking providing facilities for or incidental to the transport of goods or passengers :

The expression "subsidiary company" means a company under the control of some other company or companies, whether by reason of the majority of the voting power being vested in the other company or companies, or their nominees or shareholders, or otherwise, and such other company, or companies, are in relation to the subsidiary company, referred to as the principal company :

The expression "main transmission lines" means all extra high-pressure cables and overhead lines (not being an essential part of an authorised undertaker's distribution system or the distribution system of a railway company or the owners of a dock undertaking) transmitting electricity from a generating station to any other generating station, or to a sub-station, together with any step-up and step-down transformers and switch-gear necessary to, and used for, the control of such cables or overhead lines, and the buildings or such part thereof as may be required to accommodate such transformers and switch-gear :

The expressions "railway company" and "railway" have the same meaning as in the Regulation of Railways Act, 1873 :

The expression "sinking fund charges" includes any charges for the repayment of loans whether by means of a sinking fund or otherwise.

Other expressions have the same meaning as in the Electric Lighting Act, 1909.

References to orders under the Electric Lighting Acts shall include references to deeds of transfer executed in pursuance of powers conferred by those orders.

(a) *I.e.* the Electric Lighting Act, 1882, *ante*, p. 4642, the Electric Lighting Act, 1888, *ante*, p. 4700, and the Electric Lighting Act, 1909, *ante*, p. 5096.

37(a). . . .

(a) Section 37 relates to Scotland.

38(a). . . .

(a) Section 38 relates to Ireland.

39.—(1) All the powers and duties of the Board of Trade under this Act or the Electric Lighting Acts, or the orders and regulations made thereunder, or any local Act relating to the supply of electricity, or any enactment relating to matters incidental to such supply shall, as from such date as His Majesty in Council may fix, be transferred to the Minister of Transport, and accordingly references to the Board of Trade in any such Acts, orders, regulations, or enactments shall be construed as references to the Minister of Transport : **Section 39.**

Transfer of powers of Board of Trade to Minister of Transport.

Provided that the power of appointing Electricity Commissioners under this Act shall be exercised by the Minister of Transport with the concurrence of the Board of Trade (a).

(2) The Electricity Commissioners shall be solely responsible to the Minister of Transport and, under his direction, shall carry into effect the powers and duties conferred upon them by this Act, and the Minister of Transport shall refer to the Electricity Commissioners for their advice all matters connected with the exercise and performance of the powers and duties transferred to him under this section, except the appointment of the Commissioners and except where any act of, or order by, the Commissioners is by this Act expressly made subject to the approval of or an appeal to the Minister.

(a) The transfer of the powers of the Board of Trade was effected on January 28rd, 1920, by the Ministry of Transport (Electricity Supply) Order, 1920.

40.—(1) This Act may be cited as the Electricity (Supply) Act, 1919, and the Electric Lighting Acts, 1882 to 1909, and this Act may be cited together as the Electricity (Supply) Acts, 1882 to 1919. Short title and construction.

(2) This Act shall be construed as one with the Electric Lighting Acts (a).

(a) As to the effect of this provision, see the note under s. 14 of the Midwives Act, 1926, *ante*, p. 1555.

SCHEDULE.

Section 35.

PROVISIONS OF THE FACTORY AND WORKSHOP ACT, 1901, APPLIED TO SPECIAL ORDERS MADE UNDER THIS ACT.

80.—(1) Before the Board of Trade (a) confirm any special order under this Act, they shall publish, in such manner as they may think best adapted for informing persons affected, notice of the proposal to confirm the order, and of the place where copies of the order may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the order by or on behalf of persons affected must be sent to the Board of Trade.

(2) Every objection must be in writing and state—

- (a) the order or portions of order objected to;
- (b) the specific grounds of objection; and
- (c) the omissions, additions, or modifications asked for.

(3) The Board of Trade (a) shall consider any objection made by or on behalf of any persons appearing to them to be affected which is sent to them within the required time, and they may, if they think fit, amend the order, and shall then cause the amended order to be dealt with in like manner as an original order.

(4) Where the Board of Trade (a) do not amend or withdraw any order to which any objection has been made, then (unless the objection either is withdrawn or appears to them to be frivolous) they shall, before confirming the order, direct an inquiry to be held in the manner hereinafter provided, and may, after considering the report of the person who held the inquiry, confirm the order either without modification or subject to such modification as they think fit, or may refuse to confirm the order.

81.—(1) The Board of Trade (a) may appoint a competent and impartial person to hold an inquiry with regard to any order, and to report to them thereon.

(2) The inquiry shall be held in public, and any objector and any other person who, in the opinion of the person holding the inquiry, is affected by the draft order, may appear at the inquiry either in person or by counsel, solicitor, or agent.

Schedule.

(3) The witnesses on the inquiry may, if the person holding it thinks fit, be examined on oath.

(4) Subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with rules made by the Board of Trade ⁽¹⁾.

(5) The fee to be paid to the person holding the inquiry shall be such as the Board of Trade ^(a) may direct.

(a) See note (a) to s. 18, *ante*, p. 5253.

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